of one hundred thousand or more population, and declaring an emergency."

And find the same correctly engrossed.

PATMAN, Vice Chairman.

Committee Room,
Austin, Texas, February 1, 1921.

Hon. Charles G. Thomas, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

H. B. No. 39, A bill to be entitled "An Act amending Article 832 of Title 13 of the Revised Criminal Statutes of the State of Texas, 1911, providing that if any person liable to work upon the public roads, after being legally summoned, shall fail or refuse to attend, either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or to pay the road overseer the sum of two dollars for each day he may have been notified to work on the public roads, or to pay to such road overseer the sum of two dollars and fifty cents for each day he may have been notified to furnish his team for road work, or having attended, shall fail or refuse to perform good service, or any other duty required of him by law, or the person under whom he may work, or to comply with any duty required of him by the laws relating to work on the public roads, shall be deemed guilty of a misdemeanor; prescribing penalty for violation of this act, and declaring an emergency."

H. B. No. 105, A bill to be entitled "An Act to amend Section 1, Chapter 68 of the General Laws of the Regular Session of the Thirty-fifth Legislature of the State of Texas, 1917, entitled 'An Act to amend Article 1143, Chapter 3, Title 15, of the Code of Criminal Procedure, as amended by Chapter 20 of the acts of the State of Texas, relating to the pay of jail guards and matrons,' and declaring an emergency."

H. B. No. 107, A bill to be entitled "An Act levying an occupation tax on circus shows, carnival companies, wild west shows, trained animal shows, amusement companies and other aggregations giving similar exhibitions in this State; specifying the tax to be paid and reports to be made, and the duty of the Comptroller and tax collector; prescribing penalties; repealing Sections 14, 15 and 16 of Article 7355, Revised Civil Statutes of 1911, and declaring an emergency."

H. B. No. 213, A bill to be entitled "An Act to regulate and make sanitary, buildings and rooms used and occupied as a bakery, for the manufacture of bakery products; providing for pure and wholesome ingredients of bakery products, and the cleanliness of receptacles used in the handling of same; prohibiting the use of impure materials; fixing the weight of a loaf of bread; fixing a penalty for the violation of any provision thereof, and declaring an emergency."

H. B. No. 84, A bill to be entitled "An Act to amend Article 2925 and Article 2926, Title 49, Chapter 2, Revised Civil Statutes of Texas, relating to the compensation of election judges and clerks."

And find the same correctly engrossed.

SNEED, Chairman.

SEVENTEENTH DAY.

(Wednesday, February 2, 1921.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Thomas.

The roll was called and the following members were present:

Adams.
Aiken.
Baker.
Baldwin.
Barker.
Barrett of Bell.
Bass.
Beasley of Hopkins.
Beasley of McCulloch.
Beavens.
Binkley.
Black, O. B., of Bexar.
Black, W. A., of Bexar.
Bonham.
Brady.
Branch.
Brown.
Bryant.
Burmeister.
Burns.
Carpenter.
Childers.
Chitwood.
Coffee.
Cox.
Crawford.
Cummins.
Darroch.
Davis, John E., of Dallas.
Davis, John, of Dallas.
Duffey.
Duncan.
Edwards.
Estes.
Fly.
Fugler.
Garrett.
Greer.
Hall.
Hanna.
Hardin.
Harrington.
Harrison.
Henderson of McLennan.
Henderson of Marion.
Hendricks.
Hill.
Horton.
Johnson of Ellis.
Johnson of Wichita.
Jones.
Kacir.
Kellis.
King.
Kveton.
Lackey.
Laird.
Laney.
Lauderdale.

Lawrence.	Rountree.
Leslie.	Rowland.
Lindsey.	Satterwhite.
Looney.	Schweppe.
McDaniel.	Shearer.
McFarlane.	Sims.
McKean.	Smith.
McLeod.	Sneed.
Malone.	Stephens.
Martin.	Stevenson.
Mathes.	Stewart of Reeves.
Menking.	Swann.
Merriman.	Sweet of Brown.
Miller of Dallas.	Sweet of Tarrant.
Miller of Parker.	Teer.
Morgan.	Thomas.
Moore.	of Limestone.
Morris of Medina.	Thomason.
Morris	Thompson
of Montague.	of Harris.
Mott.	Thompson
Neblett.	of Red River.
Owen.	Thorn.
Patman.	Thrasher.
Perkins	Veatch.
of Cherokee.	Wadley.
Perkins of Lamar.	Walker.
Perry.	Wallace.
Pollard.	Webb.
Pool.	Wessels.
Quaid.	West.
Quicksall.	Williams
Rice.	of McLennan.
Rogers of Harris.	Williams
Rogers of Shelby.	of Montgomery
Rosser.	

Absent.

Johnson	Neinast.
of Gillespie.	Pope.

Absent—Excused.

Barrett of Fannin.	Marshall.
Burkett.	Melson.
Crumpton.	Quinn.
Curtis.	Seagler.
Dinkle.	Stewart
Faubion.	of Edwards.
Grissom.	Westbrook.
McCord.	Wright.

A quorum was announced present.

Prayer was then offered by Rev. J. C. Mitchell, Chaplain.

LEAVES OF ABSENCE GRANTED.

The following members were granted leaves of absence on account of important business:

Mr. Melson for today, on motion of Mr. Beasley of Hopkins.

Mr. Crumpton for today and indefinitely, on motion of Mr. Henderson of Marion.

Mr. Quinn for today, on motion of Mr. Mott.

Mr. Faubion for today, on motion of Mr. Teer.

Mr. Seagler for today, on motion of Mr. Darroch.

HOUSE BILLS ON FIRST READING.

The following House bills, introduced today, were laid before the House, read severally first time, and referred to the appropriate committees, as follows:

By Mr. Rogers of Harris:

H. B. No. 343, A bill to be entitled "An Act to amend Title 107, Chapter 1, Article 6299, of the Revised Civil Statutes of this State, relating to the appointment of commissioners of pilot."

Referred to Committee on State Affairs.

By Mr. Bonham:

H. B. No. 344, A bill to be entitled "An Act to create a more efficient road system for Bee county, Texas; making the county commissioners of said county ex-officio road commissioners and prescribing their duties as such; providing for their compensation as such road commissioners, and defining their powers and duties; providing for the condemnation of land for public road purposes, and providing that said county court can take materials adjacent to or accessible to public roads for the construction thereof, and providing for payment thereof; providing that the commissioners court shall expend money upon the roads, bridges and improvements therein in the different commissioners precincts outside of the corporate limits of any city or town in proportion to the amounts of money paid into the county from such different precincts; providing for the employment of one or more competent surveyors or engineers to supervise road work; fixing their salary, and providing for payment thereof; providing for a consulting engineer and his salary; providing that said court may adopt such system for working, laying out, draining and repairing of the public roads of the county as it may deem best; further providing for the purchase of teams, tools and machinery for working said roads, and for contracting for construction of roads and bridges; providing a method of securing bids for such contracts; further providing that said Bee county, or any political subdivision thereof, may purchase any road building material or machinery; declaring certain roads and highways to be public roads; classifying all public roads; re-

quiring the classification of the roads to be recorded in the minutes of the commissioners court; providing for the protection of trees along public roads, and for signboards; providing that the court shall have the authority to pay necessary traveling expenses of the county judge or any of the members of the court, when sent by the court out of the county on official business; providing for exemptions from road duty to certain persons; providing that certain persons shall be liable to road duty and providing a method of enforcing work on the road, and providing a penalty for failure to perform the labor required hereunder; further providing that the commissioners court may require all able-bodied male convicts not otherwise employed to labor on the public roads at such time and under such regulations as may be deemed proper, and for commutation as a reward for faithful service and good behavior, in no case to exceed one-fourth of the time required to satisfy his fine and cost, and one dollar per day for each day he labors; further providing that if a convict satisfies his fine in full the commissioners court shall pay a certain portion thereof to the officers and witnesses entitled to receive it out of the road and bridge fund upon the order of the court, and if a convict dies or escapes, the amount worked out shall be prorated on the fine, and to the officers and witnesses; and further providing that this act shall be taken notice of by the courts of this State, but shall be construed to be cumulative of the general laws of the State on the subject of roads and bridges when not in conflict therewith, but in case of such conflict, this act shall control as to Bee county; defining what the term 'roads' shall include, defining the term 'work,' repealing all other special road laws heretofore passed for the benefit of Bee county, and declaring an emergency."

Referred to Committee on Roads, Bridges and Ferries.

By Mr. Malone:

H. B. No. 345, A bill to be entitled "An Act to amend Subdivision 60, of Article 1121, Revised Civil Statutes of the State of Texas as amended by S. B. No. 493, Chapter 165, Acts of the Regular Session of the Thirty-third Legislature, and as amended by H. B. No. 333, Chapter 178, Acts of the Regular Session of the Thirty-fifth Legislature, so as to provide that the electric, gas or gasoline, denatured alcohol, or naphtha motor railways or interurban railways incorporated under this subdivision, which shall engage in transporting freight, express or passengers, shall be subject to the control of the Railroad Commission, and declaring an emergency."

Referred to Committee on Common Carriers.

By Mr. Fly:

H. B. No. 346, A bill to be entitled "An Act to amend Section 12, Chapter 71, Acts of the Fourth Called Session of the Thirty-fifth Legislature, pertaining to the construction of highways so as to provide that the State Highway Commission may pay all or any part of the cost of constructing portions of highways passing through unorganized counties or other territory in which the assessed valuations do not permit of the raising of the necessary funds to construct same, and declaring an emergency."

Referred to Committee on Roads, Bridges and Ferries.

By Mr. Thomason:

H. B. No. 347, A bill to be entitled "An Act revising the State Course of Study, providing that Texas history shall be taught in elementary and high schools; providing for instruction in thrift and in citizenship in all grades; requiring minimum courses in home economics and home nursing; specifying instruction in music and that the State Superintendent of Public Instruction may authorize public high schools to give credits for standard courses in music, taken out of school hours, and declaring an emergency."

Referred to Committee on Education.

By Mr. Mott:

H. B. No. 348, A bill to be entitled "An Act prohibiting any person from cutting down or carrying away any tree or timber upon land not his own, without the consent of the owner, with the fraudulent intent of depriving the owner of the value thereof and to appropriate the same to the use and benefit of the person taking the same; providing penalties therefor providing the modes of proving ownership; providing that this act shall be cumulative of other laws denouncing the cutting and destroying or carrying away of timber by any one from land not his own and declaring an emergency."

Referred to Committee on Criminal Jurisprudence.

By Mr. Johnson of Wichita:

H. B. No. 349, A bill to be entitled

"An Act providing that the commissioners court in counties in which is situated a city of 25,000 inhabitants or more, according to the last United States census, and has as many as twelve producing oil wells, shall authorize the appointment of a special investigator, who shall be required to take the constitutional oath of office, and give a bond in the sum of $5000, approved by and payable to the county judge of the county, who shall receive not less than $150 per month and not more than $200 per month for his services; such investigator to be appointed by the district or county attorney, or by both in the event the county attorney and district attorney disagree as to who shall be appointed, the appointment to be made by the district judge, or district judges, as the case may be; providing that such investigator shall hold his office only at the pleasure of the county and district attorney, and shall at all times work under the direction of said county or district attorney in ferreting out crime, obtaining witnesses and doing other work in connection with law enforcement; authorizing such investigator to carry a pistol, but not to make arrests, and declaring an emergency."

Referred to Judiciary Committee.

By Mr. O. B. Black of Bexar:

H. B. No. 350, A bill to be entitled "An Act prohibiting and making unlawful the use of the name of the United States government, or any department thereof, as part of the trade name of persons, associations or corporations, engaged in the business of selling army goods to the public; providing for the punishment for violations of said act, and declaring an emergency."

Referred to Committee on Criminal Jurisprudence.

By Mr. O. B. Black of Bexar and Mr. West:

H. B. No. 351, A bill to be entitled "An Act conferring upon the State Board of Control the power and authority of a State board of classification and equalization; defining its powers and duties as such; conferring upon said board power to ascertain, as near as may be, the value of all property, real, personal and mixed, tangible and intangible, subject to or rendered for taxation under the laws of the State of Texas heretofore, or hereafter to be, enacted governing the rendition and assessment of such property for purposes of State taxation; to promulgate, establish and enforce uniform standards of assessments of such property based in uniform percentages of true value for purposes of State taxation between the several counties of the State; providing that valuations of property assessed for the year 1921 and previous years shall not be affected; prescribing rules and regulations in so far as they relate to the powers and duties of this act for the conduct of said board; providing for annual meetings of said board, or some member thereof, with the several tax assessors of the State and for the expenses incident thereto; making an appropriation therefor; requiring certain statements to be made by tax assessors to the State Board of Control, and providing penalties for refusal or failure to comply therewith; providing for appeals from the county boards of equalization to the State Board of Control, and that the acts of county boards of equalization shall not be final until the same are approved by the State Board of Control; providing for notice to taxpayers; repealing all laws or parts of laws in conflict with the provisions of this act; abolishing the State Tax Board as provided for in Chapter four (4), Title one hundred and twenty-six (126) of the Revised Civil Statutes of 1911, and conferring all the powers, duties and authority heretofore conferred upon the State Tax Board by the provisions of Chapter four (4), Title one hundred and twenty-six (126), or any amendments thereto, upon the State Board of Control; providing that this act shall not in any manner impair or affect any finding, judgment, proceeding, assessments, apportionment or order heretofore had, made, found, entered or begun by the State Tax Board, nor affect any inchoate right or remedy under the provisions of Chapter four (4), Title one hundred and twenty-six (126) of the Revised Civil Statutes of 1911, or any amendments thereto."

Referred to Committee on Revenue and Taxation.

By Mr. Bonham:

H. B. No. 352, A bill to be entitled "An Act providing that any condition in a will, under which a beneficiary forfeits his interest in the property devised by the will in the event he files a contest of such will, shall be void."

Referred to Judiciary Committee.

By Mr. Rowland:

H. B. No. 353, A bill to be entitled "An Act creating the Stamford County Line Independent School District in Jones and Haskell counties, Texas; de-

fining its boundaries; providing for a board of trustees in said district; conferring upon said district and its boards of trustees all the rights, powers, privileges and duties now conferred and imposed by the general laws of Texas on independent school districts and the boards of trustees thereof; declaring that all taxes or bonds heretofore authorized by any and all former school districts included within the bounds hereof shall remain in full force and effect; providing that such board of trustees shall have the power to take, receive, sell, convey, transfer and dispose of real and personal property; repealing Chapter 2 of the Special Laws of Texas passed at the Second Called Session of the Thirty-first Legislature, and declaring an emergency."

Referred to Committee on Education.

By Mr. Stewart of Reeves:

H. B. No. 354, A bill to be entitled "An Act to make effective the provisions of Section 59 of Article 16 of the Constitution of the State of Texas with respect to conservation of the natural resources of the State, the same having been adopted as a constitutional amendment by a vote of the people in 1917; and amending Sections 1, 2 and 3 of Chapter 88, General Laws, Thirty-fifth Legislature, so as more specifically to define the public waters of the State of Texas, and provide for their appropriation, diversion and use, and declaring an emergency."

Referred to Committee on Conservation and Reclamation.

By Mr. Beasley of McCulloch:

H. B. No. 355, A bill to be entitled "An Act to amend Sections 5 and 6 of Chapter 131, Acts Regular Session, Thirty-sixth Legislature, so that correct weights of certain commodities not therein given may be standarized when sold by bushel or barrel or other quantity or unit; and prescribing a method of establishing and promulgating other standards of units when it is found necessary so to do, and declaring an emergency."

Referred to Committee on Agriculture.

By Mr. Burmeister:

H. B. No. 356, A bill to be entitled "An Act relative to the destruction of prairie dogs, rats, ground squirrels, gophers, coyotes, wolves, wild cats, English sparrows and ravens, and other animal or bird pests; making an appropriation to enable the work to be carried on and making it the duty of the State Health Officer and the commissioners' courts or any incorporated city or town to co-operate with the Federal Government in the destruction of such animals, birds and pests; prescribing procedure and method for enforcing the provisions of the act; amending Section 1 of Chapter 62 of the General Laws of the Fourth Called Session of the Thirty-fifth Legislature; repealing Section 6 of said Chapter 62, and declaring an emergency."

Referred to Committee on Stock and Stock Raising.

By Mr. Owen:

H. B. No. 357, A bill to be entitled "An Act to amend Section 12 of Chapter 95 of the Local and Special Laws of the State of Texas, passed at the Regular Session of the Thirty-third Legislature, which was an act to create a road system for Navarro county, Texas, so as to more particularly define the membership of the boards of permanent road commissioners for road districts created in Navarro county, Texas."

Referred to Committee on Roads, Bridges and Ferries.

By Mr. Jones:

H. B. No. 358, A bill to be entitled "An Act to reorganize the Sixty-third and Eighty-third Judicial Districts of the State of Texas, and to prescribe the time and fix the terms of holding the courts in each of said judicial districts; and to conform all writs and process from such courts to such changes; and to make all process issued or served before this act takes effect, including recognizances and bonds returnabe to the terms of the courts in the several districts as herein fixed, and to validate process, and to validate the summoning of grand and petit jurors and juries; repealing all laws and parts of laws in conflict herewith, and declaring an emergency."

Referred to Judiciary Committee.

BILL ORDERED NOT PRINTED.

On motion of Mr. Childers, it was ordered that House bill No. 241 be not printed.

ADOPTING MASCOT.

Mr. Merriman offered the following resolution:

Whereas, The Hon. Paul Bradfield Horton, son of Representative F. B. Horton, has been chosen as Mascot of the House of Representatives of the Thirty-seventh Legislature; and

Whereas, The Hon. Grover C. Morris is the proud father of Miss Vera D. Morris; and

Whereas, The Nineteenth Federal Amendment to the Constitution provides that there shall be no discrimination on account of sex in regard to voting; therefore, be it

Resolved by the House of Representatives, That Miss Vera D. Morris be and is hereby chosen an additional Mascot to be photographed opposite the Hon. Paul Bradfield Horton for the House of Representatives of the Thirty-seventh Legislature.

Signed—Cummins, Merriman, Mott.

The resolution was read second time and was adopted.

SENATE BILL NO. 7 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to third reading,

S. B. No. 7, A bill to be entitled "An Act providing that all automobiles, trucks and other motor vehicles owned by the State of Texas, or any department thereof, shall have printed in letters not less than two inches in height on each side thereof the word 'Texas,' followed by the name of the department of the State government controlling such vehicle; providing a penalty for using such vehicle not so designated, and declaring an emergency."

The bill was read second time.

Mr. Darroch offered the following (committee) amendment to the bill:

Add Section 3 as follows:

Section 3. Any person who shall use automobile, truck, or other motor vehicle, owned by the State of Texas, for any purpose, except in the transaction of business for the State of Texas, shall be deemed to be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than five ($5.00) dollars nor more than five hundred ($500) dollars.

Section 4. The fact that State-owned motor vehicles are not now designated creates confusion, and is an impediment to the peace officers enforcing the traffic laws of this State, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and such rule is so suspended, and this act shall take effect and be in force from and after its passage, and it is so enacted.

The (committee) amendment was adopted.

Mr. Lackey offered the following amendment to the bill:

Amend Senate bill No. 7, line 30, by striking out "automobile."

The amendment was lost.

Mr. Lackey offered the following amendment to the bill:

Amend Senate bill No. 7 by striking out the enacting clause.

Question recurring on the amendment, yeas and nays were demanded.

The amendment was lost by the following vote:

Yeas—30.

Mr. Speaker.	Lackey.
Bass.	Lauderdale.
Beavens.	Lindsey.
Black, O. B., of Bexar.	McFarlane.
Brady.	Malone.
Branch.	Merriman.
Davis, John E., of Dallas.	Morris of Medina.
Davis, John, of Dallas.	Neblett.
Edwards.	Perkins of Lamar.
Hall.	Rosser.
Hanna.	Rountree.
Henderson of McLennan.	Stevenson.
Jones.	Stewart of Reeves.
Kellis.	Thompson of Harris.
	Webb.
	Williams of Montgomery.

Nays—86.

Adams.	Harrison.
Aiken.	Henderson of Marion.
Baker.	Hendricks.
Baldwin.	Hill.
Barker.	Horton.
Barrett of Bell.	Johnson of Ellis.
Beasley of Hopkins.	Johnson of Wichita.
Beasley of McCulloch.	Kacir.
Bonham.	King.
Brown.	Kveton.
Bryant.	Laird.
Burmeister.	Laney.
Burns.	Lawrence.
Carpenter.	Leslie.
Childers.	Looney.
Chitwood.	McDaniel.
Coffee.	McKean.
Cox.	McLeod.
Crawford.	Martin.
Cummins.	Menking.
Darroch.	Miller of Dallas.
Duffey.	Miller of Parker.
Duncan.	Morgan.
Estes.	Moore.
Fugler.	Morris of Montague.
Garrett.	Mott.
Greer.	Owen.
Hardin.	Patman.
Harrington.	

Perkins of Cherokee.
Perry.
Pollard.
Quicksall.
Rice.
Rogers of Harris.
Rogers of Shelby.
Rowland.
Satterwhite.
Schweppe.
Shearer.
Sims.
Smith.
Sneed.
Stephens.
Swann.
Sweet of Brown.
Sweet of Tarrant.
Teer.
Thomas of Limestone.
Thomason.
Thompson of Red River.
Thorn.
Thrasher.
Veatch.
Wadley.
Walker.
Wallace.
Wessels.

Absent.

Binkley.
Black, W. A., of Bexar.
Fly.
Johnson of Gillespie.
Mathes.
Neinast.
Pool.
Pope.
Quaid.
West.
Williams of McLennan.

Absent—Excused.

Barrett of Fannin.
Burkett.
Crumpton.
Curtis.
Dinkle.
Faubion.
Grissom.
McCord.
Marshall.
Melson.
Quinn.
Seagler.
Stewart of Edwards.
Westbrook.
Wright.

Mr. O. B. Black of Bexar moved to postpone further consideration of the bill indefinitely and the motion to postpone was lost.

Question recurring on the passage of the bill to third reading, yeas and nays were demanded.

Senate bill No. 7 was passed to third reading by the following vote:

Yeas—96.

Adams.
Aiken.
Baker.
Baldwin.
Barker.
Barrett of Bell.
Beasley of Hopkins.
Beasley of McCulloch.
Bonham.
Branch.
Brown.
Bryant.
Burmeister.
Burns.
Carpenter.
Childers.
Chitwood.
Coffee.
Cox.
Cummings.
Darroch.
Davis, John E., of Dallas.
Davis, John, of Dallas.
Duffey.
Duncan.
Estes.
Fugler.
Garrett.
Greer.
Hardin.
Harrington.
Harrison.
Henderson of Marion.
Hendricks.
Hill.
Horton.
Johnson of Wichita.
Kacir.
Kellis.
King.
Kveton.
Laird.
Laney.
Lauderdale.
Lawrence.
Leslie.
Lindsey.
Looney.
McDaniel.
McKean.
McLeod.
Malone.
Martin.
Mathes.
Menking.
Miller of Dallas.
Miller of Parker.
Morgan.
Moore.
Morris of Montague.
Mott.
Neblett.
Owen.
Patman.
Perkins of Cherokee.
Perkins of Lamar.
Perry.
Pollard.
Pope.
Quicksall.
Rice.
Rogers of Harris.
Rogers of Shelby.
Rowland.
Satterwhite.
Schweppe.
Shearer.
Sims.
Smith.
Sneed.
Stephens.
Swann.
Sweet of Brown.
Sweet of Tarrant.
Teer.
Thomas of Limestone.
Thomason.
Thompson of Red River.
Thorn.
Thrasher.
Veatch.
Wadley.
Walker.
Wallace.
Webb.
Wessels.
Williams of McLennan.

Nays—22.

Mr. Speaker.
Bass.
Beavens.
Black, O. B., of Bexar.
Brady.
Edwards.
Hall.
Hanna.
Henderson of McLennan.
Johnson of Ellis.
Jones.
Lackey.
McFarlane.
Merriman.
Morris of Medina.
Pool.
Rosser.
Stevenson.
Stewart of Reeves.
Thompson of Harris.
Williams of Montgomery

Present—Not Voting.

Fly.

Absent.

Binkley.
Black, W. A., of Bexar.
Crawford.
Johnson of Gillespie.
Neinast.
Quaid.
Rountree.
West.

Absent—Excused.

Barrett of Fannin.
Burkett.
Crumpton.
Curtis.

Dinkle.
Faubion.
Grissom.
McCord.
Marshall.
Melson.
Quinn.
Seagler.
Stewart of Edwards.
Westbrook.
Wright.

SENATE BILL NO. 38. ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to third reading,

S. B. No. 38, A bill to be entitled "An Act creating, establishing and providing for the maintenance of a State Tuberculosis Sanatorium for Negroes, and declaring an emergency."

The bill was read second time.

Mr. Stevens offered the following amendment to the bill:

Amend Senate bill No. 38 by striking out all of Sections 2, 3, 4, 8, 9, 10 and 11, and insert the following:

Section 2. Said sanatorium shall be located at the State Tuberculosis Sanatorium at Carlsbad in Tom Green county. The building site to be selected by the three members of the State Board of Control, the State Health Officer and the superintendent of the State Tuberculosis Sanatorium, which site shall be selected as soon as possible after this act goes into effect.

Section 3. The planning, the erection and the equipping of the buildings herein provided for shall be under the supervision of the State Board of Control.

Section 4. Said State Board of Control shall have constructed on said site suitable, substantial, permanent and fireproof buildings and equipment sufficient to accommodate 100 patients, said buildings, equipment, and sanatorium to be provided with modern improvements for furnishing good water, heat, ventilation, sewerage and other necessities. Immediately after this act goes into effect said State Board of Control shall have plans and specifications for said buildings and sanatorium prepared by the chief of division of design, construction and maintenance, and said Board of Control is authorized to do all things necessary to construct and establish this sanatorium. The architect whose plans and specifications are accepted shall be the supervising architect in the construction of said sanatorium; said supervising architect shall at all times act under the supervision and control of said Board of Control. Said architect shall execute a bond payable to the State of Texas at Austin, Texas, in a sum to be fixed by the Board and to be approved by the Board, with good and sufficient sureties conditioned that said architect shall be liable and bound to pay to the State of Texas all damages as it may sustain by reason of defective plans and specifications or any willful failure or negligent performance of duty on the part of said architect. The compensation of said architect shall not exceed 3 per cent. Provided, that the State shall not be limited to one recovery upon said architect's bond or contractor's bond hereafter provided for, if not exhausted, but shall be authorized to bring as many actions as necessary until such bond be exhausted.

Section 9. There is hereby appropriated out of any funds in the Treasury of the State of Texas not otherwise appropriated three hundred thousand dollars ($300,000) to construct and equip the sanatorium provided for in this act, out of which may also be paid the necessary traveling and other expenses of the Board of Control in locating and constructing said sanatorium. The appropriation herein provided for is to be construed as the maximum sum to be appropriated for the completion, and fully equipping with lights, heat, plumbing, water, etc., the buildings as is provided for in Section 4 of this act.

Section 10. Upon the completion and acceptance of the sanatorium by the Board of Control, the sanatorium shall be operated, managed and controlled in the same manner and by the same officials and authority as the State Tuberculosis Sanatorium is operated, managed and controlled.

Section 11. The superintendent of the State Tuberculosis Sanatorium shall, under the direction of the State Health Officer, determine whether any person is entitled to admission into said sanatorium under the law.

Question—Shall the amendment be adopted?

On motion of Mr. Bonham, the bill was set as a special order for 2 o'clock p. m. tomorrow.

RESOLUTION SIGNED BY THE SPEAKER.

The Speaker signed, in the presence of the House, after giving due notice thereof, and its caption had been read, the following enrolled resolution:

S. C. R. No. 11, Extending felicitations to Hon. Juan M. Garcia.

SENATE BILL NO. 65 ON SECOND READING.

The Speaker laid before the House, on

its second reading and passage to third reading,

S. B. No. 65, A bill to be entitled "An Act to require the giving of an additional supersedeas bond in cases pending on appeal or writ of error in Supreme Court or the Court of Civil Appeals, wherever, after the execution of the original bond, the same becomes insufficient by reason of the death or insolvency of the sureties on such bond, or from any other cause, and providing for the repeal of all laws in conflict herewith, and declaring an emergency."

The bill was read second time.

Mr. Hendricks offered the following amendment to the bill:

Amend Senate bill No. 65, page 2, Section 2, line 4, by striking out all after the word "shall" down to and including the word "made," in line 6, and inserting the following, "order execution on said judgment, but said appeal or writ of error shall not be dismissed but continued upon the docket as if said cause had been appealed or writ of error granted upon a cost bond."

The amendment was adopted.

Mr. Hendricks moved to reconsider the vote by which the amendment was adopted, and to table the motion to reconsider.

The motion to table prevailed.

Mr. Miller of Dallas offered the following amendment to the bill:

Amend Senate bill No. 65, page 2, Section 2, line 4, by inserting after the word "days" "after such order is served" and striking out the words "after such order is made."

The amendment was adopted.

Senate bill No. 65 was then passed to third reading.

MESSAGE FROM THE SENATE.

Senate Chamber,
Austin, Texas, February 2, 1921.

Hon. Charles G. Thomas, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has adopted

H. C. R. No. 6, Providing that the Legislature convey to the farmers of Texas the assurance of its intention to assist in the betterment of cotton marketing conditions and urging at this time that there be such a substantial reduction in acreage planted that production, together with cotton on hand will not more than meet the requirements of spinners.

Respectfully,
A. W. HOLT,
Assistant Secretary of the Senate.

PROVIDING FOR A CONSTITUTIONAL CONVENTION.

The Speaker laid before the House, as postponed business for consideration at this time,

H. . R. No. 12, Providing for a convention to frame a Constitution for the State of Texas.

The resolution having heretofore been read second time, with amendment by Mr. Williams of McLennan pending.

Mr. Williams of McLennan withdrew the pending amendment.

Mr. John Davis of Dallas offered the following amendment to the resolution:

Amend House Concurrent Resolution No. 12, as amended, by striking out all after the resolving or enacting clause and insert in lieu thereof the following:

1.

An election shall be held on the first Tuesday after the first Monday in February, 1922, to elect delegates to a constitutional convention to frame and submit to the people of Texas a new State Constitution. Such election shall be governed and controlled by the laws then in force in regard to general elections.

2.

The Governor shall issue his proclamation upon the passage of this resolution, directing the several officers of this State empowered by law to conduct, manage and supervise elections under the laws of Texas, and as now provided by this resolution, to hold said election and make return of the result of the same.

3.

The convention herein provided for shall be composed of eighty-two delegates, elected as follows: Twenty of said delegates shall be elected as delegates-at-large by the qualified electors of the entire State of Texas, and two delegates shal be elected by the qualified electors of each of the thirty-one senatorial districts in Texas, as the senatorial districts are constituted at the time of the election of the delegates to said convention.

4.

The delegates elected to the convention shall assemble in the city of Austin on the first Monday in May, 1922, for the purpose of framing a new Constitution.

5.

The Constitution framed by the convention herein provided for shall be submitted to a vote of the qualified electors for adoption or rejection at an election to be held on the fourth Saturday in July, 1923. Such election shall be governed and controlled by the laws then in force in regard to general elections. Returns of such election shall be made by the election officers of each county to the county judge within thirty days after such election. The county judge of the several counties of the State shall transmit the vote of their respective counties to the Secretary of State within ten days after receiving the returns. If, upon a count of the vote of the people of the State, a majority shall be shown to have voted for the adoption of the Constitution, the Governor of the State shall at once make proclamation of such fact, and the Constitution thus adopted shall at once become the Constitution of the State of Texas.

Signed—John Davis of Dallas, Miller of Dallas, Perkins of Cherokee.

Question—Shall the amendment be adopted?

REPORT OF COMMITTEE TO INVESTIGATE CHARGES AGAINST HON. H. J. NEINAST.

Mr. Fly, Chairman, submitted the following report which was read to the House:

Austin, Texas, February 1, 1921.

Hon. Chas. G. Thomas, Speaker of the House of Representatives.

Sir: We, your Special Committee, appointed in accordance with a resolution introduced in and adopted by the House of Representatives on January 13, 1921, for the purpose of making inquiry into certain charges preferred in said resolution against H. J. Neinast, member of the House from the Sixty-ninth District of Texas, which resolution appears in the House Journal, Regular Session of the Thirty-seventh Legislature, page 50, et seq., respectfully report that the committee has completed its labors, and in obedience to the instructions as contained in said resolution, herewith transmits a correct and accurate stenographic transcript of all proceedings had in and before the committee, together with the findings, conclusions and recommendations of the committee.

The expense incurred by this committee is covered by the itemized statement attached hereto and made a part of this report.

The findings, conclusions and recommendations of the committee are as follows:

No. 1. We find that the evidence substantiates the charge contained in Section 1 of said resolution, and we further find that the offense with which the respondent, H. J. Neinast, was convicted upon his plea of guilty, is a felony.

No. 2. We find that the statement contained in Section 2, said resolution, is true and correct.

No. 3. We find that the undisputed testimony confirms the charge contained in Section 3 of said resolution. We further find that the offense for which the respondent, H. J. Neinast, was convicted upon his pleas of guilty in the United States District Court, Western Division of Texas, Austin, Texas, June term, June 17, 1919, is a felony.

No. 4. We find that the evidence adduced relating to Charge No. 4, as contained in said resolution, is conflicting, and insufficient, and in the judgment of the committee, said charge is not sustained.

No. 5. We find that the statements contained in Sections 5, 6, 7, and 8, of said resolution, are true and correct.

Section 7, Article III, of the Constitution of the State of Texas, provides that no person shall be Representative unless he be at the time of his election, a qualified elector of this State. It is the conclusion and decision of your committee, therefore, that the respondent, H. J. Neinast, was not, under the law and the evidence, a qualified elector of this State at the time of his election, and hence, was ineligible to the office of Representative of the State of Texas.

In view of the fact that the transcript of all the proceedings had in and before this committee is very voluminous, and in view of the further fact that a full printing of such transcript in the Journal of the House would entail considerable expense, which expense, in the opinion of this committee, is unnecessary, this committee recommends that the provision of the resolution requiring such printing be rescinded, except in so far as same relates to the arguments of counsel.

Your committee finds that the House of Representatives is the sole judge of the qualifications and election of its own members, hence, it is unnecessary to submit specific charges for impeachment proceedings, and in their stead recommends the adoption of this committee report by the House, which shall have the effect of immediately declaring vacant the seat now held by the respondent, H. J. Neinast.

It is the opinion of your committee, after careful consideration of the facts, that as a question of propriety and sound public policy, the evidence is sufficient to justify and warrant the unseating of the respondent, H. J. Neinast, as member of the House of Representatives of Texas, and such action is recommended by your committee.

Respectfully submitted,
FLY, Chairman.
BALDWIN, Secretary,
BEASLEY of Hopkins,
BURKETT,
CUMMINS,
MARTIN.

Mr. Wessels submitted the following minority report:

Hon. Chas. G. Thomas, Speaker of the House of Representatives.

Sir: I desire, as a member of the investigating committee appointed by you to investigate the charges against H. J. Neinast, member-elect from Washington county, beg leave to file this, a minority report from said committee. I recommend to the House that Mr. Neinast retain his seat in the House, because the charges preferred against him in the resolution have not been sustained except that he plead guilty in the indictment in the United States District Court of the said district of Texas. I find from the testimony that Mr. Neinast was not guilty of the charges made in the indictment, and that he only plead guilty upon the advice of his attorney, that in his plea of guilty he did not understand nor did he believe that he was pleading guilty to any wrongdoing against his country, but that he did so solely and alone upon the advice of his attorney and for the purpose of not being worried and bothered with this matter any further, which as I do not consider as binding upon him. I find that the affidavit that he made before the Draft Board is true and that he was not guilty of conspiracy in obstructing the draft.

I further find that he did not plead guilty to a felony as the Attorney General's Department has ruled that it was a misdemeanor.

That if it was a felony, then the conviction in the United States District Court of this district, would not and could not affect the rights of Mr. Neinast in this State. Said convictions being in a foreign jurisdiction.

Therefore I ask the House to adopt this report and permit Mr. Neinast to continue in his seat as a member of this body from Washington county, he having been elected to this position since the indictment and the plea of guilty and the people of his district have seen proper to call upon him to represent them in this body.

Respectfully submitted,
JOHN H. WESSELS.

ARGUMENT OF R. A. BALDWIN.

Before the Neinast Investigating Committee, House of Representatives, January 31, 1921.

Mr. Chairman and Gentlemen of the Committee.

I am going to promise you that I shall try to be brief. The testimony which has been adduced before the committee, to the mind of the speaker, raises two questions and only two main questions. The first is purely a question of law. The second is an arbitrary question—a question that arises under Article 3, Section 8, of the Constitution, which says that the House, that each house, of the Legislature shall be the judge of the qualifications of its own members. There is no procedure laid down under the law, no rule of guidance, for the House to determine when the facts are sufficient to warrant and justify the expulsion of a member. It is an arbitrary question, as contradistinguished from a question of law. Irrespective of whether the House should believe that any statute has been violated, irrespective of any crime that may be thought to have been committed by a member of the House under investigation, the House can, upon a question of propriety and sound public policy, expel a member.

The legal question raised by the evidence is, was the said H. J. Neinast qualified, as a question of law, under the Constitution and laws of the State of Texas, on November 2, 1920, for election to the House of Representatives in the Legislature of this State?

As I understand the contentions of the respondent—I shall refer to Mr. Neinast as the respondent in this case—according to his contentions, as I under-

stand them, the offense charged in the indictment in the Federal court, upon which he was convicted under his plea of guilty, was not of the grade of felony. There is no question but that this is the crucial legal question involved, and I shall base my argument upon that question upon the uncontradicted testimony of this case.

The respondent was indicted under the act of Congress approved May 18, 1917, as amended by the act of Congress of June 15, 1917, and known as the Espionage Act. Section 3 of that act, in so far as it relates to the offense charged in that indictment, reads as follows:

"Whoever, when the United States is at war, * * * shall wilfully obstruct or attempt to obstruct, the recruiting or enlistment service of the United States, * * * shall be punished by a fine of not more than $10,000, or by imprisonment for not more than twenty years, or both."

That act and that section does not, as you will see, say anything about a conspiracy, and the punishment there named is not punishment for a conspiracy. Section 4 of said act does deal with and prescribes punishment for conspiracy, and reads as follows:

"If two or more persons conspire to violate the provisions of Sections 2 or 3 of this title, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in such sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided, a conspiracy to commit an offense under this title shall be punished as provided in Section 37 of the act to codify, revise and amend the penal laws of the United States, approved March 4, 1909."

That is the conspiracy article, as contained in the same act, and you will note prescribes the same penalty for violation of the offense named in Section 3 thereof as is contained in Section 3 for the doing of the act, as distinguished from conspiring to do the act, with the further proviso that, except as provided, the punishment shall be as provided in Section 37 of the act approved March 4, 1909, and that act reads as follows:

"If two or more persons conspire, either to commit any offense against the United States or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of such conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

I call your attention to the fact that the punishment prescribed in both of these statutes carries with it, as an alternative, a prison sentence, in each instance of more than one year. In the first, that found in the Espionage Act, of not more than twenty years imprisonment, and that found in Section 37 of not more than two years. Now, the question is, is the offense denounced in the Espionage Act, under which the respondent was indicted, a felony? The offense is not in said act denominated either a felony or a misdemeanor. Can the same acts at the same time constitute a felony and a misdemeanor? Can a felony and a misdemeanor coexist as the result of one and the same transtion? Might a crime be either a felony or a misdemeanor, or both? There are decisions, gentlemen, which answer these questions in the negative. State v. Waller, 43 Ark., 381, 384; Barino v. Lounsberry, 8 Conn., 622, 36 A., 597; 16 Corpus Juris, 55.

Now, by some statutes, all crimes which are punishable by imprisonment in a State penitentiary, with or without hard labor, are felonies. In most jurisdictions, a crime is a felony under such a statute if it may be punished by imprisonment in a State penitentiary, although the court or jury may have the discretion to reduce the punishment to imprisonment in a jail or to a fine, and although such lesser punishment is in fact imposed. 16 Corpus Juris, 56, and cases there cited in the notes.

Now, gentlemen, I wish to discuss, not all the Federal decisions bearing upon the question of misdemeanor and felony, but such decisions as I believe fairly represent the status of the law on that question. I am going to discuss decisions on both sides, in order that we may get as clearly as possible the exact status of the Federal decisions on the question of infamous crimes, infamous punishment, felony and misdemeanor.

In the case of Mackin v. United States, 117 U. S., 348, decided by the Supreme Court on March 22, 1886, is found the following language:

"No person can be held to answer, without presentment or indictment by a grand jury, for any crime for which an infamous punishment may be imposed by the court. The test is whether the crime is one for which the statutes authorize the court to award an infamous punishment, not whether

the punishment ultimately awarded is an infamous one; when the accused is in danger of being subjected to an infamous punishment if convicted, he has the right to insist that he shall not be put upon his trial, except on the accusation of a grand jury."

In that case the defendants were prosecuted under Article 5440, Revised Statutes of the United States, which reads as follows:

"If two or more persons conspire, either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or both fine and imprisonment, in the discretion of the court."

I wish to quote further from the Mackin case:

"Nor can any such effect be attributed to the similar phrase in the Act of July 5, 1884, Chapter 225, by which no person shall be prosecuted, tried or punished for any offense under the internal revenue laws, 'unless the indictment is found or the information instituted within three years next after the commission of the offense, in all cases where the penalty prescribed may be imprisonment in the penitentiary, and within two years in all other cases.' 23 Stat., 122. The including in a single clause of two classes of offenses, one of which may be prosecuted by information, is a sufficient reason for mentioning informations as well as indictments, without attributing to Congress an intention that both classes shall be prosecuted by information; and imprisonment in the penitentiary is made the line of distinction between the two classes.

"But the most conclusive evidence of the opinion of Congress upon this subject is to be found in the act conferring on the police court of the District of Columbia 'original and exclusive jurisdiction of all offenses against the United States, committed in the District, not deemed capital or other infamous crimes; that is to say, of all simple assaults and batteries, and all other misdemeanors not punishable by imprisonment in the penitentiary.'. Act of June 17, 1870, Chap. 133, Art. 1, 16 Stat., 153; Rev. Stats. District of Columbia, Art. 1049. 'Infamous crimes' are thus in the most explicit words defined to be those 'punishable by imprisonment in the penitentiary.'"

I am informed, gentlemen, that last October the Attorney General's Department, in an opinion written by Mr. Stone, in the form of a letter, held that the penalty prescribed and the offense denounced in said Article 5440, is not a felony but a misdemeanor, and that is the reason why I am discussing decisions on that question at this time. In that opinion, or letter, the Attorney General states that in the case of Berkowitz v. United States, 93 Fed. Rep., 452, which case was decided by the United States Circuit Court of Appeals on March 10, 1899, it is held that the offense denounced by said Article 5440 is a misdemeanor. I quote from that case:

"A conspiracy 'to commit any offense against the United States' is not a felony at common law, and if made a felony by statute, the indictment would not necessarily be defective for failing to aver that the act was feloniously done. * * * Where the offense is created by statute and the statute does not use the word 'feloniously,' there is a difference of opinion among State courts whether the word must be put in the indictment. 1 Bish. Crim. Proc., Art. 535. But under the decision in the Staats case (United States v. Staats, 8 How., 41), we are clearly of the opinion that it need not be done."

The decision in the Berkowitz case is founded upon, or at least states as its authority, the case of Bannon and Mulkey v. United States, 156 U. S., 464, and I quote from the Bannon case:

"Neither does it necessarily follow that because the punishment affixed to an offense is infamous, the offense itself is thereby raised to the grade of a felony. * * * The case of Wilson (114 U. S., 417) and Mackin (117 U. S., 348) prescribe no new definition for the word 'felony,' but secured persons accused of offenses punishable by imprisonment in the penitentiary against prosecution by information, and without a preliminary investigation of their cases by a grand jury."

Now, the case last quoted, the Bannon case, is later in point of time than the Mackin case, both decided by the Supreme Court of the United States, and, therefore, might be considered as overruling the Mackin case, or of holding that in the Mackin case the court did not decide the precise point at issue in the Bannon case.

These two decisions of the Supreme

Court, the Mackin case and the Bannon case, and the case in the Circuit Court of Appeals, appear to my mind to represent the status of the decisions on this case on this point up to March 4, 1909. Congress on that date passed its act of that date, Chap. 321, 25 Stat. L., 1080, entitled "An Act to codify, revise and amend the penal laws of the United States," wherein, for the first time, it seems, in the history of Federal statutory enactments, the terms "felony" and "misdemeanor" were defined, being Article 335 of said act, and reads as follows:

"All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors."

It will be observed that the grade of the offense, whether felony or misdemeanor, is, by statute, determined by the character of the punishment which may be imposed under the law denouncing any particular offense, irrespective of the fact that such law may also permit a lesser penalty than death or imprisonment for a period of less than one year to be imposed. The maximum rather than the minimum punishment, therefore, which is attached to the commission of any particular offense under the Federal laws, appears to determine whether such offense is a felony or a misdemeanor. The offense charged against the respondent in the indictment before referred to carried with it a minimum penalty of fine in the sum of one dollar, and a maximum penalty of fine in the sum of $10,000 and imprisonment for a period of twenty years.

Now, gentlemen, had the punishment assessed against the respondent been the maximum penalty, I ask you, would he have been convicted of a felony or a misdemeanor? Had he received a fine of $10,000 and twenty years imprisonment, would he have been convicted of a felony? Suppose he had received the minimum penalty, and had been fined in the sum of one dollar, or received any penalty less than one year imprisonment, would that fact change the grade of the offense, according to the definition given in the statute I have just quoted? If Rosenbaum in said cause had been awarded the maximum penalty of the law and the respondent the minimum penalty, would they be guilty in different degrees, both being parties to one and the same conspiracy as therein charged? I think not. It is my opinion that the degree of guilt would be the same, the penalty different in degree, or the punishment rather that was imposed.

Now, is the offense denounced in the Espionage Act both a felony and a misdemeanor? Can the same acts charged against the respondent in said indictment constitute at the same time a felony and a misdemeanor? I do not believe that such construction can fairly and reasonably be placed upon the law. If the punishment which the court may impose, not what the court did ultimately impose, is greater than one year imprisonment, then, under the statute defining felonies and misdemeanors, the offense is clearly a felony.

The statute last quoted is considerably later in point of time than any of the decisions referred to, and no doubt would have the legal effect of overruling any decision in conflict with that statute decided prior to the passage of the statute, and so far as I have been able to determine, that statute is the law at the present time. In my opinion, that statute is conclusive against the contentions of this respondent that he was not in said indictment charged with a felony, and conclusive against his contention that he did not plead guilty to and was not convicted of a felony. I do not believe that the said indictment charged offenses of different degrees of guilt, but that it charged one offense to which was attached different degrees of punishment in the discretion of the court, and that, regardless of the punishment imposed by the court in that cause, the offense charged against the respondent was of the grade of felony; that the respondent did not plead guilty to and was not convicted of another and different offense than that charged in the indictment.

Now, gentlemen, I call your attention to the fact that in the opinion of the Attorney General, written by Mr. Stone, no reference, as I recall it, is made to the Federal statutes on the subject. Whether or not he overlooked that statute I don't know, but no reference is made to it. The Berkowitz case cited by him in that opinion was decided something like ten years, or more, before this statute was enacted, and if the Berkowitz case and the Bannon case established the law prior to that time, and I think they did, then they were superseded, as I conceive it, by the declaration of Congress in enacting Section 37 of its Act of March 4, 1909.

I wish to call your attention to the

State enactments on the subject and to review the State decisions, that is, the Texas statutes and decisions. Article 55, Title 2, Code of Criminal Procedure of the State of Texas, is not greatly different from the Federal statute defining felonies and misdemeanors, and I want to read that statute to you carefully:

"Every offense which is punishable by death or by imprisonment in the penitentiary, either absolutely or as an alternative, is a felony; every other offense is a misdemeanor."

Now, under that statute, and bearing in mind the terms of the Federal statute on the same question, I want to read to you an excerpt from a Texas case; and I hope you gentlemen will get the case and read it carefully. I presume that Judge Mathis has the case. This is the case of Huff v. McMichael, 127 S. W., 56, on rehearing. The court says:

"Upon investigation we find that the offense of which he was convicted, as provided by the act of Congress, was a felony, punishable in the discretion of the presiding judge by confinement in the penitentiary at hard labor for not more than five years or in the alternative by a fine of not more than $5000.00. See Act Cong. Sept. 26, 188, c. 1039, 25 Stat. 496; same act in Supplement to Revised Statutes of the United States, 1874-1891, Vol. 1, page 621, (U. S. Comp. Stat. 1901, page 2661). Our own statute (Art. 55, White's Ann. Penal Code) provides that 'every offense which is punishable by death or by imprisonment in the penitentiary, either absolutely or as an alternative, is a felony; every other offense is a misdemeanor.' This statute has been construed by our own court of Criminal Appeals in Campbell v. State, 22 Tex. App. 262, 2 S. W., 825, wherein it is held that a person who may be convicted under a statute similar to the one under consideration, no matter what the punishment may be, is guilty of a felony; and this, so far as we are informed, has been the uniform holding of said court under this statute. See Woods v. State, 26 Tex. App., 490, 10 S. W., 108. To the same effect is the ruling in Ward v. White, 86 Tex., 170, 23 S. W., 981, opinion by Chief Justice Stayton."

You will note that the last case was decided by the Supreme Court of the State of Texas.

No, gentlemen, it occurs to me that that case is in point. It is a decision by a Texas appellate court, holding, as I take it, that where a statute prescribes a penalty in the alternative, that is, by imprisonment in the penitentiary or by fine, or both, in the discretion of the court, such a law defines a felony and not a misdemeanor. I want you gentlemen to investigate that case and the other cases I have cited, and any other cases that come before us.

With this law before us, there are certain inevitable conclusions. It appears to me that there is no evidence before the committee that the respondent has, since the time of his conviction, had restored to him full citizenship and right of suffrage, or pardoned. Therefore, being forced to this conclusion by such study as I have been able to give to the subject, and led by what I conceive to be the law, and led by what I understand to be the evidence, that part of the evidence which is undisputed, which is uncontradicted, it is my opinion that the respondent, on November 2, 1920, the date of his election to the office of Representative in the Legislature of Texas, stood convicted under the laws of the United States of a felony.

Now, Article 6, Section 1, Clause 4, of the Constitution of the State of Texas, denies to certain persons the right of suffrage, and includes, among others, all persons convicted of any felony, subject to such exceptions as the Legislature may make. The only enactment by the Legislature under that Constitutional provision that I am aware of is Article 2938, Title 49, Revised Civil Statutes of the State of Texas, and provides that:

"The following classes of persons shall not be allowed to vote in this State: * * * All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned."

Section 7, Article 3 of the Constitution of the State of Texas, provides that no person shall be a representative, unless he be, at the time of his election, a qualified elector of this State. Inasmuch, in the opinion of the speaker, as the respondent at the time of his election on November 2, 1920, stood convicted of a felony, and inasmuch as he has not restored to him full citizenship and rights of suffrage, and has not been pardoned, he was not on that date eligible to vote, and was not, therefore, Mr. Chairman, as an unavoidable conclusion, to my mind, eligible to the office of Representative.

Gentlemen, I have taken up more time in the discussion of the legal phase of the question than I had desired, but now

is the time to deliberate. I know, Mr. Chairman, that I would not intentionally inflict any wrong upon a colleague of mine in the Legislature. I know that I have felt the responsibility, and that as a result of this case, I have not been content to follow the line of least resistance, but I have sought diligently, early and late, to know that I am right; and with all the investigation that I have made up to this time, I want to say in all candor that my mind is absolutely open to receive the facts and the law, and to be convinced. Realizing my fallibility, I am not, I hope, one of those who places his opinion high above the world. I have been studying this case, and I have presented to you the law as honestly and as frankly as I know how, and my conclusions.

Now, the second question which is before this committee for determination in making its recommendations to the House: Independently of any legal question raised by the evidence or the facts adduced, are the facts adduced upon said inquiry sufficient, upon a question of propriety and sound public policy, to warrant and justify the expulsion, by the House of Representatives, of the said H. J. Neinast? That, as I stated in the beginning, is, perhaps, an arbitrary question, to be determined by a vote of the House, after considering the testimony. I take it that the House will go into a Committee of the Whole House, act as a jury, unprejudiced and uninfluenced by any consideration except the evidence in passing upon the question of propriety and public policy, and that it is peculiarly within the province of the House as a body to act upon and determine that question; and were it not for the fact, gentlemen, that the resolution under which we are acting, and bound to act, and limited in our actions, provides that this committee shall make recommendations to the House, I would not, for one, touch upon this question, because I realize that I am expressing only my individual views, arrived at, however, carefully and painstakingly and conscientiously; and it is not binding upon any other member, and they might look upon it differently to what I do. If they did, I might, in the opinion of some persons, be subjected to the charge or suspicion that I was influenced by some prejudice.

But I want to call your attention to some of the evidence. I am going to do so briefly, since you are as familiar with it as I am, and it is printed. We have five copies of it, and each of you can familiarize yourself with the testimony on any point with which you are not now familiar. Furthermore, as provided by the resolution, the testimony will be published at length in the Journal, as I understand it, and will be available for the consideration of each member of the House.

The respondent testified, as did also his counsel, that his plea of guilty was entered for the sole purpose of avoiding the expense, time and trouble incident to defending against the charge as contained in the indictment; that such plea was entered upon the advice of his counsel; that the matters of fact set out in the affidavits of William Rosenbaum and Willie Thaler, as well as in his own affidavit, copied into and forming a part of said indictment, were then true and are still true; that the respondent knew that he was accused of false swearing, but was not aware that the indictment contained any charge of disloyalty to his country. Claud J. Carter testified before the committee that he was at said time Assistant United States District Attorney, and that he read the indictment to the respondent. The testimony is uncontradicted that the respondent is a man of more than average intelligence, is able to read, and was a leader in the community in which he then resided, and understands the English language. I think it is uncontradicted that the indictment was read to the defendant in the Federal court. The testimony of his counsel, and the bearing of his counsel, and the appearance of his counsel, the arguments of his counsel, the questioning of his counsel, indicates to the mind of the speaker that the respondent had in that trial an extraordinarily able and conscientious lawyer, a man of surpassing ability, a man who, I believe it is logical to conclude from the evidence, knew fully the exact nature of the charge proclaimed in that indictment; that he knew the contents of that indictment, and further, that his counsel was an attorney of ability and conscientiously would not have misled his client as to the true nature and extent of the charge to which he was pleading guilty. The testimony, it is true, gentlemen, is contradictory on that point. I have studied it, and I have arrived at the conclusion that the preponderance of the evidence shows that H. J. Neinast did know at the time he entered his plea of guilty in open court on June 17, 1919, that he was in fact and in truth pleading guilty to a charge of interfering with the recruiting and enlistment service of the United States; that he knew in truth

and in fact that he was pleading guilty to a charge of false swearing.

I say, gentlemen, that I am stating my individual views upon the evidence; but these views are subject to review by the members of the House, themselves acting as fairly and impartially as possible to all concerned, with the testimony before them. It is my humble opinion, honestly arrived at, forced upon me, that the facts in evidence are of such a serious character that they are sufficient, under the rule adopted for the consideration of evidence by the Court of Criminal Appeals, if believed, to warrant and justify the expulsion of H. J. Neinast as a member of the House of Representatives of the State of Texas.

Judge Mathis: I want to ask you a few questions. Assuming that this man is guilty of a felony, and that he was convicted in another jurisdiction, say, of Texas, would that apply? I would like to have your legal knowledge upon that question.

Mr. Baldwin: If he was convicted in another jurisdiction than Texas?

Judge Mathis: Yes, sir.

Mr. Baldwin: Yes, sir; I think it would hold, for this reason: The Constitution and statutes state that the following classes of persons shall not be allowed to vote in this State, and the fourth clause under that provision is: "All persons convicted of any felony."

Now, if he was convicted of a felony, as I view a felony under the Federal laws, then the Texas statutes would hold in a case of this kind. The Texas statutes and Constitution say that being convicted of a felony he may not vote. It does not say he must be convicted in a Texas court, but says being convicted of any felony he shall not be allowed to vote in this State.

Judge Mathis: You haven't investigated any of the authorities for that?

Mr. Baldwin: No, sir. Further answering that point, I take it that whether or not the Federal statute carries with it, Mr. Chairman, any other penalty than punishment for felony, such punishment would deprive a person of his citizenship rights or have the effect of destroying his right of suffrage. I say that whether or not the Federal statutes impose such additional penalty, if it is determined that the respondent was convicted of a felony, then he cannot vote in Texas, and his qualifications for a Representative in the Texas Legislature are not dependent upon and prescribed by any Federal enactment, but are prescribed by the Texas Constitution and Texas statutes on that point. If a person has been convicted of any felony, without limitation as to jurisdiction, wherever it is, unless he has been restored to full citizenship and the right of suffrage, or pardoned, he shall not be allowed to vote. I think that is the only law that applies on that point.

SPEECH OF JOHN M. MATHIS.

January 31, 1921.

I will read from a brief that I have prepared in the short time allotted me. It states my position, as I understand the law to be. Before discussing some of the law questions involved in this case, we beg to call the court's attention to the fact that the record in this case does not show a willful obstruction of the draft. It was well said in the case of the United States v. Pierce, 245 Fed., 888, that:

"When Congress wrote into Section 3 of the so-called Espionage Act the words: 'Or shall wilfully obstruct the recruiting or enlistment service of the United States,' it may have had in mind the hundreds and thousands of cases where fathers and mothers and brothers and sisters will obstruct in a way and to an extent the recruiting and enlistment service by urging and soliciting their sons and brothers not to enlist. No one will contend, I think, that such an act will be held a wilful obstruction of the enlistment service to the injury of the service of the United States within the intent and meaning of Section 3 of the act under consideration. But, should some third person go about soliciting and urging young men not to enlist, extravagantly and untruly depicting the horrors and dangers and consequences of war, impugning the motives and purpose of the President and Congress in declaring war, and misrepresenting the objects sought to be attained by our government in declaring the existence of a state of war, we have a case where a jury well may find a wilful obstruction of the recruiting or enlistment service of the United States to the injury of the service of the United States, even if the government is unable to prove that a single person was induced by such acts not to enlist when otherwise he would not have enlisted."

When Is an Offense a Felony?

In the absence of a statute upon the question in prescribing punishment for

crime the Federal courts must look to the common law definition of the word "felony."

Proposition.

No crime created by statute can be made a felony, unless it is so defined by the terms of its creation, as to constitute a felony. Where a statute declares that the offender shall under the particular circumstances be deemed to have feloniously committed the act, it makes the offense a felony. In some of the States every crime is held to be a felony where the punishment prescribed is confinement in the penitentiary, but that doctrine does not apply to the Federal statute, and in a prosecution under the Federal law in a Federal court. Making the breaking into a postoffice a crime, punishable by fine and imprisonment at hard labor for not more than five years, does not create a felony. And so it was said in the case of Considine v. United States, 112 Fed., page 342, that bribery was not a felony at common law. See State v. Polcheck, 7 N. W., page 708.

Under the Federal criminal law procedure no offense against the United States is a felony unless specifically declared to be such by statute, as was said in the case of Inreacker, 66 Fed., pages 290 to 293. The following cases sustain this proposition:

Dolen v. United States, 133 Fed., 440.
United States v. Blevin, 46 Fed., 381.
United States v. York, 131 Fed., 323.
United States v. Vigil, 34 Pac., 530.
United States v. Coppersmith, 4 Fed., 198.
United States v. Bannon, 156 U. S. Rep., 466.

Assuming, however, that there is a Federal statute defining the offense with which Mr. Neinast was charged as a felony, we will now address ourselves to the principal contention of the prosecution where in it is sought to disqualify Mr. Neinast upon the ground that his conviction in the United States court brings him within the inhibition of the Constitution of this State as to his qualifications as a member of this House. The Constitution provides that a member of the Legislature must be an elector. Article 2938 of Vernon's Civil Statutes prohibits from voting all persons convicted of a felony, except those restored to full citizenship. We can only determine a proper construction of this statute where the conviction for an alleged felony in a United States court; or that is to say, in a jurisdiction other than a Texas court, by presenting as an analogous case the disqualification of a witness under similar circumstances. We accordingly present the following proposition which we earnestly insist is fully sustained by the authorities which are cited thereunder:

"A person who is offered as a witness in one jurisdiction is not disqualified because he has been convicted of crime in another jurisdiction in the absence of a statute so providing."

Authorities.

Campbell v. State, 23 Ala., 44.
Com. v. Green, 16 Mass., 515.
Packus v. U. S., 240 Fed., 250.
Queenan v. Okla., 71 Pac., 218.
National Trust Co. v. Gleason, 77 N. Y., 400.
Logan v. United States, 144 U. S., 263; 36 Law Ed., 426.
State v. Landrum, 106 S. W., 1111.

Remarks.

This question is ably discussed in State v. Landrum, 106 S. W., 1111, supra, wherein it is said:

"That no sound reason can be given for holding that the conviction of a witness in Indiana against the criminal laws of that State should disqualify such witness from testifying in the courts of Missouri."

It is said further:

"The weight of modern opinion seems to be that personal disqualifications arising, not from the law of nature, but from the positive laws of the country, especially such as are of a penal nature, are strictly territorial, and cannot be enforced in any country other than that in which they originated. Greenleaf on Evidence, 376; Story, Conflict of Laws, 92, 104; Sims v. Sims, 75 N. Y., 466. Commenting on this rule the Court of Appeals of New York observed in the case just cited: 'I think this doctrine applicable to the question now in hand, and that there is nothing in the Constitution of the United States which prevents such application, or requires that the personal liabilities, such as incompetence to testify or to vote, which may be imposed upon a person convicted of a crime in one State, should follow him and be enforced in all the others. If such were the operations of the constitutional provisions, the qualifications of witnesses called in our courts and voters at our elections might be made to depend upon the laws of other States instead of our laws. * * * As the penal statutes of the State of

Indiana could not operate extra-territorially.'"

In the case of Campbell v. State, 23 Ala., 45, the court said:

"The competency of Edward Stiff as a witness was objected to on two grounds, viz.: Because he had been convicted of a libel in the State of Ohio, and because he was insane. At common law, conviction of a libel would not render a witness incompetent. 7 Co. Dig., 462; 1 Phil. Ev., 24. Under our statutes a witness is not disqualified for that reason. Clay's Digest, 169, page 2. But if the law was different, a conviction in Ohio would not have that effect in this State. Commonwealth v. Green, 17 Mass., 541."

In the case of Brown v. United States, 233 Fed., 353, it was held that:

"As the Federal courts are courts of an entirely different sovereignty and are wholly independent of the States, a conviction of an infamous crime in the State court rendering a person incompetent to testify in the State court does not render him incompetent to testify in the Federal courts any more than it would in the courts of a foreign jurisdiction, for the Federal courts, while following the State laws, do not give effect to a conviction by a State court."

We quote from the case of Sims v. Sims, 75 N. Y., 466, as follows:

"The Revised Statutes provide (2 R. S., 701, page 23) that no person sentenced upon a conviction for felony shall be competent to testify in any case, etc., unless pardoned by the Governor or Legislature, except in the cases specially provided by law, but that no sentence upon a conviction for any offense other than a felony, shall disqualify or render any person incompetent to be sworn or to testify, etc.

"The same statute in a subsequent section (page 702, Art. 30) defines the term 'felony' when used in that act or any other statute, to mean an offense for which the convict is liable by law to be punished by death or by imprisonment in a State prison. I think it quite clear that the disqualification created by this statute is consequent only upon a conviction in this State. It is found in that part of the Revised Statutes which relates to crimes and their punishment, and is in the nature of an additional penalty consequent upon the sentence. Although the disqualification incidentally affects parties in civil litigations wherein the testimony of the convict may be material, and serves as a protection to those against whom his testimony may be sought to be used, yet the provisions which inflict it must be regarded as a part of the criminal law of this State. Furthermore, the provisions requiring that the offense be a felony, and defining the term 'felony' as used in that act, indicates that the conviction referred to is a conviction within this State."

Remarks.

We have cited cases involving the qualifications of jurors and the qualifications of witnesses for the reason that the court reports will show one thousand cases involving these questions to where there is one case involving an election contest where the right of a party to vote is questioned, on the theory that such jurors, witnesses or electors, had been convicted of a felony. The decisions are uniform that an inhibition against a witness testifying, or a person sitting as a juror, which is covered by a State statute, does not exclude a party from exercising such right or privilege, who may have been convicted in another jurisdiction. For the purpose of showing that the same rule would obtain in Texas if our statute relative to the competency of witnesses, who had been convicted of felonies in other States, would not render such witnesses incompetent if it were not that the statute expressly refers to the conviction of felony in other jurisdictions. The question is ably discussed in Pitner v. State, 23 Texas Crim. App., 366. We beg to call attention to the illuminating brief of the lamented Judge Davidson, who appeared for the State as Assistant Attorney General in that case. The contention of Judge Davidson was that the inclusion of the language of "other jurisdictions" did not disqualify a witness who had been convicted of a felony in the United States court or in a sister State. The court overruled this contention, holding that the previous statute which provided that a witness who may have beeen convicted of a felony in this State or in any other jurisdiction. We have made reference to this phase of the Texas law for the reason that all of the cases which we have been able to find hold that every State can enact laws containing provisions regulating the qualifications of witnesses, jurors or electors, and that where reference is not made in the local statute to convictions in other States or other jurisdictions, that such convictions in other States or other jurisdictions do not disqualify either the elector, the witness or the juror.

In the case of Harrison v. Mancravie,

264 U. S., 784, we quote as follows from the case cited:

"The Oklahoma statute imposes a heavy penalty on one convicted of a crime of a killing which it denounces. Penal statutes have no extraterritorial effect and they must be strictly construed. It cannot have been the intention of the Legislature of that State to impose this penalty on those convicted by the courts of other States or countries of like offenses under the statutes of foreign jurisdictions. It must have been their intention, and it must be the true construction of this statute that its effect was to disqualify those only who are convicted of the offense it described in the courts and under the laws of the State of Oklahoma. The question has often arisen whether or not under the laws of the State or country which disqualifies a person, who has been convicted of a felony by a court of another State or country, wrought disqualification and the decision has been that it did not so disqualify."

In the case of Queenan v. Oklahoma, 71 Pac., 218, the Supreme Court in discussing the disqualification of a juror who had been previously convicted of a felony in the State of Nebraska, uses the following language:

"Section 2013 of the Session Laws of 1899, in relation to the qualification of electors in this territory, provides as follows: 'The term "Qualified electors" within the meaning of this act shall include all male persons of the age of twenty-one (21) years or upwards, belonging to either of the following classes who have resided in the territory for the period of six months, in the township sixty (60) days and in the voting precinct thirty (30) days preceding any election.' (Then follows the classes of persons who may vote.) Under Section 5183 of our Code of Criminal Procedure a conviction for a felony is a general cause of challenge. A felony under our Criminal Code is defined to be a crime which is or may be punishable with death or by imprisonment in the territorial prison. There is no express provision in our statute which renders a person disqualified from serving as a juror in this territory who was convicted of a crime in any other State or territory. In the absence of express statute making a juror incompetent who has been convicted of a criminal offense punishable by imprisonment in the penitentiary in another State, such conviction and sentence can have no effect by way of penalty or personal disability or disqualification beyond the limits of the State in which the judgment was rendered. This is the rule laid down in the case of Logan v. United States, 144 U. S., 263. It must therefore follow that the conviction of Harper for a felony in the State of Nebraska and his sentence to the penitentiary in said State would not make him an incompetent juror. The case of Parks v. United States, 240 Fed., 350, is here cited."

I call this committee's attention to the fact that there is no express statute in this State, making a juror incompetent because of his conviction of a felony in another State, such conviction and sentence could have no effect by way of penalty, etc., beyond the limits of the State in which the judgment was rendered.

A person to be a qualified juror must be a qualified elector, and if a conviction of a felony in another jurisdiction does not disqualify him as a juror then it does not disqualify him as an elector, and if a conviction of a felony does not disqualify a person as an elector in another State or territory, then it follows that a conviction of a felony in the Federal Court does not disqualify him as an elector in this State.

In the case of Packus v. U. S., 240 Fed., 350, it was held that in a prosecution in the Federal Court for crime one who had been previously convicted in a State court of an infamous crime is a competent witness, though he would not have been at common law.

In the case of Hildreath v. Heath, 1 Ill. App., 82, it was held that the provision in the charter of the city of Chicago rendering one ineligible as an alderman for conviction of crime refers to convictions under the laws of Illinois, and not in the Federal courts.

It appears that when Mr. Neinast was a candidate in the general election a request made to the Attorney General of Texas, for an opinion as to whether or not he was ineligible as a member of the Legislature, and we submit below the copy of the reply of the Attorney General at this time. Assuming that Mr. Neinast plead guilty to a felony that was in another jurisdiction and the laws of this State do not apply and cannot hold.

Judge Fly: What about the requirements of a man to take cognizance of the law of the Federal Government. In other words, are the Federal laws to be treated in the same category as the laws of another State?

Judge Mathis: Yes, sir. It is a different sovereignty, a different jurisdiction. These gentlemen, who are attor-

neys, in this matter, know that the Federal Court is an entirely different jurisdiction or that a conviction in any court does not apply and cannot hold to the State laws, unless our statutes should say convicted of a felony in this or in any other jurisdiction. There are States, a number of States, which say that, but the statutes of Texas do not say that.

Mr. chairman and gentlemen of the committee, I am going to take a position that I don't know whether it is law or not, but I am pursuing it along with an argument that I expect to make a little later on, showing my ignorance of the law, and that while I was ignorant of the law, a great many others were, too.

It appears that Mr. Neinast was a candidate in the general election, and a request was made to the Attorney General of Texas as to whether or not he was ineligible, and we submit the reply of the Attorney General at that time. This letter is dated October 12, 1920.

"Hon. W. H. Bouldin, County Attorney,
Brenham, Texas.

Dear Sir: Your letters of October 7th and 9th, addressed to the Attorney General have been referred to me for attention. In response thereto, you are respectfully advised that the certificate made by Mr. J. H. Lehmann, chairman of the American Party executive committee, in and for Washington county, is, to some extent, irregular, but it is the opinion of this department that it is sufficient compliance with the law pertaining to the certification of the names of the various candidates of political parties, and the county clerk would be authorized and should place the names of the candidates of the American Party upon the official ballot.

In the certified copies of United States District Court, Western District of Texas, it is shown that the nominee of the American Party for representative, H. J. Neinast, was convicted upon his plea of guilty for unlawfully and wilfully conspiring and confederating with other parties to obstruct the selective draft law of this nation.

This indictment was for a violation of the provisions of Section 5440, United States Statutes, in which it was held to be a misdemeanor in the case of Berkowitz v. United States, 93 Federal Reporter, page 452; and again it was held under the last quoted article in the case of Gaudy v. The State, 10 Nebraska, 243, 4 Northwestern, 1019, that an offense under this provision of the Federal statute was not a felony and a conviction thereunder would not disqualify the offender to vote or hold office. The statutes of this State, Article 55, Penal Code, define a felony to be:

'Every offense which is punishable by death or by imprisonment in the penitentiary held absolute or as an alternative, is a felony.'

For further information, we direct your attention to the cases of Ex Parte Beela, 81 Southwestern, 739; Cooper Grocery Company v. Neblett, 203 Southwestern, 365.

There seems to be some conflict as to our State's statutory definition of a felony and a holding of the courts of the United States. However, this matter has been construed by the courts and held, as above indicated, that the offender was not disqualified from voting or holding office. You are therefore advised that the fact that H. J. Neinast has been convicted in the Federal court, as before mentioned, would not prevent his name being certified as a candidate of the American party for Representative in this the Sixty-ninth Representative District.

Very truly yours,
(Signed) C. L. STONE,
Assistant Attorney General."

I didn't know anything about that letter until the night I left here.

Now, then, gentlemen, I am going to present to you my idea about this case. On the day that your committee organized I stated to you that if after an investigation of these charges there was evidence presented showing that H. J. Neinast, representative-elect from Washington county, was a disloyal citizen, that I would withdraw from the case and join in the request that he be impeached and denied a seat in the House of Representatives.

That investigation has closed, and if there has been any testimony introduced before this committee showing, or attempting to show, that H. J. Neinast has, by word or action, said or done anything that could be determined disloyal, I have not been able to find it.

I crave the indulgence of this committee while I fairly and impartially discuss with you each and every fact introduced before the committee touching these charges. I realize that there are five lawyers upon this committee and that I could not mislead, if I cared to, any member of this committee away from the testimony as introduced.

The first charge against Mr. Neinast is that he plead guilty before the

United States District Court for entering into conspiracy with William Rosenbaum and Willie Thaler to obstruct the draft by making an affidavit which was false. In reply to this charge Mr. Neinast and I solemnly swore to your committee that, although he plead guilty to the charge that he is not guilty and was not guilty at the time he plead guilty to same. To determine whether or not he conspired with the other parties and made a false affidavit, we will now look to the testimony and see if he made a false statement. The affidavit made by William Rosenbaum is as follows:

"The State of Texas,
County of Washington.

Before me, the undersigned authority, on this day personally appeared William Rosenbaum, personally known to me, who being first duly sworn, says:

That he is a farmer by occupation, and owns about 558 acres of land in Washington county, Texas, of which some 50 acres are in cultivation; that Willie Thaler, his stepson, who has been drafted for service in the United States Army, and whose serial number is 2333, lives with the affiant and does the principal part of the work necessary to the cultivation of the said cultivated land; that affiant and Willie Thaler together cultivate said land and make thereon about 10 bales of cotton and 500 bushels of corn a year.

That in addition to the cultivation of said land, they also raise cattle for the market, and part of the duties of the said Willie Thaler on affiant's place is looking after and caring for such cattle.

Mr. Parker admitted the truth of the first paragraph.

In answer to the second paragraph, he said he did not know whether they raised cattle for the market on William Rosenbaum's place.

"That affiant has only one son of his own, who is married, with a family of his own and who does not live with nor work for affiant.

That some two or three years ago affiant's right shoulder and three ribs in his right side were broken and he has not, since said time, been able to perform full farm labor; in fact, his right shoulder is in such condition that he performs farm labor with difficulty.

That said Wilie Thaler gives his entire time to the cultivation of said land and looking after the cattle of affiant, and on account of the scarcity of farm labor it would be with difficulty that help could be obtained, if at all, to take his place.

Affiant says that the continuance of the said Willie Thaler in said enterprise is necessary to the maintenance thereof, and he cannot be replaced by another person without a direct, substantial loss and detriment to the adequate and effective operation of the said enterprise.

Mr. Neinast, on the same sheet of paper that contained the affidavit of William Rosenbaum, said that he had personal knowledge of the matters set out in said affidavit and that they were true.

I assert that if the matters and things set out in the affidavit of the said William Rosenbaum are substantially true, then H. J. Neinast was not guilty of disloyalty against his government in the making of the affidavit and should not have been indicted and certainly could not have been convicted. The indictment charges that H. J. Neinast swore that the affidavit made by William Rosenbaum was true, and that by reason of this fact he had assisted in obstructing the draft.

The only witness introduced by this committee who attempted, in the remotest degree, to give evidence that any part of this affidavit was untrue, was B. Parker, sheriff of Washington county, and president of the local draft board, and personal enemy of H. J. Neinast. This committee will recall the fact that I handed to Mr. Parker this affidavit and asked him to please tell to this committee, or show to this committee, wherein this statement, or any part thereof, was untrue; that I read to Mr. Parker, sentence by sentence, and section by section, this affidavit and demanded of him to show wherein this affidavit was false. Mr. Parker admitted upon the witness stand that William Rosenbaum is a farmer by occupation and that he owns about 550 acres of land in Washington county, Texas, of which some 50 acres are in cultivation; that Willie Thaler is his stepson and that he had been drafted for service in the United States army and that his serial number was 2333, and that he had lived with Mr. Rosenbaum, his stepfather; and that he did not know whether he did the principal part of the work necessary to the cultivation of the land, and that he did not know whether he worked with his stepfather to cultivate the land, and that he did not know whether they made ten bales of cotton or five hundred bushels of

corn. In answer to the second paragraph of the affidavit, he said he did not know whether they raised cattle for the market and that part of the duties of the said Willie Thaler on William Rosenbaum's place was to look after and care for such cattle. He said that Rosenbaum did have one son who is married and who has a family of his own, and lives a few miles from William Rosenbaum.

With reference to paragraph 3, he said he did not know anything about it, but somebody had told him that some years ago Mr. Rosenbaum had gotten drunk and had fallen off of a wagon, but that it did not amount to anything, or words to this effect; that he did not know anything about him having his ribs broken and his right shoulder blade broken; he could not say whether it was true or untrue.

With reference to paragraph 5, Mr. Parker did not know whether Willie Thaler had given, and gave, his entire time to the cultivation of said land and looking after the cattle of affiant or not, but that he, Parker, believed that there would be no difficulty in getting help to take his place.

With reference to paragraph 6, he says that the retaining of Willie Thaler at home was not necessary and that he could be replaced by another, and that there would not be a direct loss.

Taking Mr. Parker's testimony as a whole, it seems that in his, Parker's, opinion Rosenbaum could have gotten labor at that time to take Willie Thaler's place on the farm, and that he, Parker, did not believe that William Rosenbaum would suffer a loss, or the enterprise would suffer a loss, if Thaler was taken.

This is the only testimony before this committee showing, or attempting to show, that the statements contained in this affidavit were not true.

Testimony was introduced by Mr. C. W. Homeyer, a banker and stock raiser of Burton, Washington county, Texas, and by Ed. Schatz, a merchant of Burton, Washington County, Texas, that they knew of the incident when William Rosenbaum, four or five years ago from this date, fell off a wagon and, as they expressed it, was seriously hurt and was brought to Burton for treatment, and remained in Burton from ten days to two weeks under the care of a physician. That is the positive testimony that Mr. Neinast swore to, showing that William Rosenbaum was injured as the affidavit said he was injured.

In reply to that, Mr. Parker said that he "heard that Rosenbaum got drunk one time and fell off of a wagon."

I take it that it is not necessary to introduce witnesses because it is a matter of common knowledge to every member of this committee and to every citizen of Texas that during the war and while the young men of the United States were being called upon to take arms against the German Empire, that it was a difficult matter to obtain help to work on the farms. I don't believe that you could get three men in all Texas but what would say that it was a difficult matter to do that, and if it was a difficult matter to get somebody to take up the labor and work of the registrant, then it would necessarily follow that the enterprise would suffer a direct and substantial loss if the man drafted should be sent to the army. But admitting, for the sake of this argument, that it would not have been a direct loss, and admitting furthermore that another man could have been employed to take the place of the registrant, then would you say that H. J. Neinast had sworn falsely—it being his own opinion and nothing but an opinion after all? In other words, Parker's opinion was that it could be done; Neinast's opinion was that it could not be done, and I am inclined to believe that a great and overwhelming majority of the people of Texas, and of the nation as well, if called upon to testify before this committee, would substantiate the opinion of Mr. Neinast and Mr. Rosenbaum, rather than the opinion of Mr. Parker upon the question of scarcity of labor and the difficulty in getting labor at that time to perform that work; and, if you had trouble in getting labor, then certainly, if this young man was taken away from the farm, it would be a direct lost to the enterprise.

I submit to this committee in all fairness and in all justice that if you seven men were sitting as jurors in the United States District Court of this district, and this case had been brought to your attention, and the testimony was in, as it has been adduced upon this hearing, could you, under your oaths as men and jurors, return a verdict against H. J. Neinast, convicting him of making false affidavits? If you tell me that your consciences would not have permitted you to do this, then the fabric and base of this entire case has fallen to the ground.

Mr. Neinast takes the stand and under oath tells this committee that he

made that affidavit believing at that time that it was absolutely true and that on this very day, under his oath, he believes every word and line and sentence and still believes it absolutely true, and no man has contradicted it.

Mr. Parker says that when this matter was referred to him, or to the draft board, that he made an investigation to ascertain if the statements made in said affidavits were true. I asked him to give the name of any neighbor or anybody in the county from whom he received information that these statements were not true, and he said that he "did not remember of but one man that that this man was Mr. Kammerand; that he had stated that the 'boy was not much good.'" I don't undertake to give the exact language of Mr. Parker, but you have his testimony before you, and I will not undertake to give in substance what he said; but outside of that statement of Mr. Parker he could give to you the statement of no man, woman or child who says that the affidavit made by Mr. Rosenbaum and sworn to by Mr. Neinast was not true.

On the same day that Mr. Rosenbaum made this affidavit Willie Thaler also made an affidavit in virtually the same words as his stepfather, William Rosenbaum, and Mr. Neinast approved and swore that the matters in that statement were true, and he here and now asserts to this committee and to the world that the affidavit made by Willie Thaler on the 3rd day of April, 1918. were and are absolutely true. Then if these statements are true then certainly William Thaler, William Rosenbaum and H. J. Neinast did not willfully conspire together to evade the draft by making false statments to the board and the entire case falls of its own weight.

There is testimony in this record showing that on the 11th day of April, 1918, Willie Thaler made another affidavit before Fritz Homeyer, notary public and justice of the peace of Burton, Washington county, Texas, which was different from the affidavit made on the 3rd day of April, 1918. Mr. Neinast says that he never did know, nor did he ever hear of the affidavit made by Willie Thaler on the 11th day of April. 1918, until that affidavit was set out in the indictment; that he has never seen the original affidavit made by him, did not know that he had made it, and had no connection whatever with it; that the only affidavit that he approved and said was true was the one that Willie Thaler made on the 3rd day of April, 1918, and sworn to before Miss Eula Namverck, at Brenham, Washington county, Texas.

If these two affidavits made by William Rosenbaum and Willie Thaler on April 3, 1918, and approved and sworn to by H. J. Neinast are true, then there could be no conspiracy between H. J. Neinast, William Rosenbaum and Willie Thaler to willfully obstruct the recruiting service of the United States, because registrant and his stepfather had a perfect right to make an affidavit and place their claim before the proper officials, and it was their duty, if they desired to claim exemption, to make the affidavit and to submit it to the board. They had the right to call upon their neighbors and friends who had knowledge of the facts set out in the affidavit and ask them to give their assent, or affidavits, to these facts.

Mr. Rosenbaum has done nothing more than any father in Texas, or in the nation, had the right to do; he has violated no law of God or of man in the making of this affidavit, because his affidavit was true and he had the right to make it, and the right to present it to the authorities for their investigation; he had the right to call on Mr. Neinast to assist him in the matter, and Mr. Neinast had the right to make the affidavit that he made and having made this affidavit and said affidavits being true, there was no conspiracy to violate the laws of the United States, and consequently these men would have promptly been acquitted upon the trial of the case.

So far, gentlemen of the committee, I have tried to show you from this record, that the affidavits made were true. Now I want to pass to the discussion of the fourth paragraph of the charge that is to the effect that H. J. Neinast was a disloyal citizen.

Every witness introduced by Mr. Neinast upon the witness stand, even his bitterest enemy, B. Parker, testified that up until this indictment was had, H. J. Neinast had borne, in Washington county, the home of his nativity, a good reputation as being an honest, law-abiding, honorable, loyal citizen, and no one testified that his reputation for loyalty was bad until after he had plead guilty to the charges, and that was upon the theory that he had plead guilty to disloyalty charges and they presumed by that that he was disloyal. The committee undertook to show by Mr. Parker that Mr. Neinast had not

done his part in the war, that, he, Parker, had looked up the records and found that Mr. Neinast owned twelve hundred odd acres of land in Washington county and that he only took $650.00 worth of Liberty Bonds; that he did not take any on the first issue, but did on the second, third and fourth, to the amount of $650.00; and that he was assessed $10.00 for the Red Cross and paid $5.00. Mr. Neinast's answer to this proposition was that "It is true I own twelve hundred odd acres of land in Washington county, Texas, and that the probable value of that land, as proved by Mr. Parker, is about $35.00 per acre, and that I owe somewhere between thirty and thirty-five thousand dollars; that during the war times were hard so far as money matters were concerned with me and that I had to borrow the money from the bank to buy the bonds; with reference to the assessment of $10.00 for the Red Cross, I paid the $5.00 and me and my family took out the balance at the Lutheran church; that I was assessed $25.00 for some other war matter and that I took that, and that my assessment in this community on this item was a larger assessment than any other man's in the community." In other words, Mr. Neinast says that he contributed all that he was able to contribute at that time to the war.

No witness has taken the witness stand and testified to one single word, or one single act during the whole lifetime of H. J. Neinast showing that he was ever disloyal to his government, or to his native State.

I want to lay aside my brief a moment and say to this committee that all on God's green earth that you have got against H J. Neinast is that he swore to an affidavit that his neighbor had made, just like you would have done and I would have done, and because he did that, and because he went with his neighbor to Tom Carter's office and went from there to Austin, and that he received the sum of $45.00. That is all on God's green earth that H. J. Neinast has ever done. He has Teutonic blood running through his veins. Why, gentlemen, he knows no other country except America, knows no other State except Texas, sprung from the loins of an old Confederate soldier, he has done no wrong, save except that Mr. Parker, who has been his enemy for lo these many years, has brought about all this difficulty, has brought about all this trouble. Now he is seeking to destroy him. No witness has taken the witness stand and testified to one single word or single act showing that he is disloyal to his government, or to his native State.

Doubtless members of this committee have been talked to by two or three parties from Washington county and have endeavored to poison the minds of this committee against H. J. Neinast. I say this because of the fact that Judge Burkett, a member of this committee, has made certain inquiries of Mr. Neinast and myself which indicate that somebody has been carrying rumors to this committee. One was to the effect, I presume, that William Rosenbaum had given H. J. Neinast $3,000.00 in money, or had promised to give him $3,000.00 in money, and to substantiate, or to attempt to substantiate that contention, these interested parties had a copy of a deed of trust that H. J. Neinast gave to William Rosenbaum's mother-in-law for $1500.44 in May, 1919, and as it nearly always happens, truth crushed to earth, bleeding and dying, has risen again. It happens that H. J. Neinast, by documentary evidence, was able to establish to the satisfaction of each and every member of this committee that that rumor was just another infamous charge against a good citizen of Washington county.

This committee will bear me witness that I have made no effort, nor have I permitted those with me, to discuss with this committee this case. I have treated it as though you all were jurors, unbiased, impartial, who were willing to hear the testimony and render a verdict without reference to the outside world and without reference to any statements that were made that were not under oath, and doubtless words have fallen upon the ears of some members of this committee and of this House that if the matter was brought before this committee and these men were placed upon the witness stand, they could not sustain their charges.

Now then, gentlemen, I confess it does look hard to me. In the beginning of this case I filed my answer for Henry Neinast, filed an answer to these charges, and I supposed that this investigation could have been restricted to those charges, but I said to the committee then, gentlemen, I propose to open the book of Henry Neinast's life for fifty-three years, and let you examine it page by page and see if you can find anything therein that shows him other than a good citizen of Texas, and out of it all, there comes after a searching of the records, after an investigation prompted by malice and

by hatred, after all, with the best investigation possible, they say to this committee that twenty odd years ago that H. J. Neinast was in business and plead guilty and paid a fine of $5 for pursuing an occupation without a license. In other words, that he sold liquor. It must be for the purpose of influencing some man on this committee or in the House that they brought that question up. I can't think but what the question was repeatedly asked, "Didn't he sell liquor" but for this very purpose? Let me tell you, gentlemen, that there are a few men that sold liquor that are pretty good men, but in this character of case, gentlemen, where every man upon this committee knows that he sold liquor, the fact that Neinast, of German birth, in Washington county, had been charged with disloyalty, of wilfully swearing a lie to obstruct the draft, and afterwards pleading guilty, every man made up his mind that that fellow is a disloyal citizen. Now, then, when the matter is brought before this committee, men are brought here to swear the truth to determine whether this man is disloyal and whether or not he is a perjuror in the sight of God and of man, and although he lives within twelve miles of the county seat, you could not bring in one man or woman to say that one word of the affidavit that he made on the 3rd of April, 1918, wasn't the God's truth, with the exception of Mr. Parker, who says, I don't believe or I do believe that he could have got farm labor. After all, it would be an opinion between these two men. My information was, and it is now, that at that time when the boys were being taken from the farm, from the work shop, and from the office, that it was a difficult matter to get a man to work on the farm. That was my recollection of it, but after all is said, Mr. Chairman and gentlemen of the committee, Mr. Neinast said he didn't think they could have gotten farm labor, so that it is a question of opinion. Inasmuch as I have said in this document that this is a speech that I delivered before the committee, I will go back to it.

Now, as to the plea of guilty. Is there a man upon this committee who believes that H. J. Neinast, or that his attorney, believed when this matter was settled by a plea of guilty that either Neinast or Mathis knew that they were pleading guilty to a felony, or that they were pleading guilty to a conspiracy against the United States government by swearing falsely in this case? I have given testimony before this committee that H. J. Neinast, acting upon my suggestion, and at the suggestion of William Rosenbaum, that he would pay the fine and that the matter would be over with, that any of us believed at that time that Rosenbaum or Neinast had either sworn falsely, or that they had conspired to obstruct the draft; it was solely and merely a relief from being worried with this case. I believed that it was nothing more than a misdemeanor, and surely if this committee should find that it was a felony you cannot believe that I thought it was a felony, you cannot believe that Mr. Neinast thought it was a felony, because surely I would not have permitted Mr. Neinast to plead guilty to a felony under the facts in this case. It may be that I was mistaken as to the law and I don't say that I am an expert as a lawyer, but I believed that it was simply a misdemeanor and it was just like a man who, being caught with a pint of whiskey in his room could go down to the courthouse, pay a $50 fine and have the matter over with. It was not that I believed that the man was guilty of any serious offense, and it was just a matter of expediency to get through with it.

In this connection, and I hope this committee will pardon me in going out of the record to this extent, that on Tuesday noon last, after Mr. Carter of San Antonio had testified before this committee with reference to the law, I had occasion at 1 o'clock, or about that time of that day, to hold a conversation with that great lawyer and jurist, the Hon. W. L. Davidson in the lobby of the hotel, and he asked me how I was getting along with the case, and I told him what had happened with reference to the testimony of Mr. Carter, that this offense was a felony, and he simply remarked to me, "John, he is mistaken about it; it is not a felony." Then, if the attorney for Mr. Neinast was mistaken about it being a misdemeanor and permitted him to plead guilty to what some member of this committee claims a felony, then I have done H. J. Neinast a grievous wrong in permitting him to plead guilty to it, but I am ready to have my opinion in this matter linked with the statement of that great judge who, within five hours after he conferred with me, quietly folded his tent and silently stole away to that haven of rest from which no traveler has ever returned. And,

again, if I was mistaken about the law, then the Attorney General of Texas has advised the local Democratic committee of Washington county that the offense to which Mr. Neinast plead guilty was a misdemeanor; that this opinion was given by the Attorney General upon the request of the Democratic committee of Washington county, seeking advice as to whether or not Neinast could get his name upon the official ballot. I take the liberty in this argument of attaching a copy of a letter written by the Attorney General's Department in this matter, showing that they believed it was a misdemeanor.

Now, then, gentlemen of the committee, you will seek to destroy H. J. Neinast for doing that which his attorney advised him to do? Not upon the basis that he was guilty of any wrong, surely not upon the basis that he had conspired against his government and had made false statements, but simply as a matter of expediency and getting away from the Federal court at a small expense; surely you will not destroy him if a mistake has been made by his attorney!

I take it, gentlemen of the committee, that the gravity of this offense lies in the fact that he was indicted for conspiring with others to violate the laws of the United States, by making a false affidavit, and that that carries with it disloyalty. Let's reason together as men who want to do right before God and his fellowman.

When Miss Julia Rankin was put upon the witness stand, she being the clerk under Mr. Parker, she said that so far as she knew, and she kept all of the records of the draft board, Mr. H. J. Neinast had never appeared before the board, or had never made any affidavit, or done any act, or thing, in assisting anybody, or attempting to assist anybody in not going to war; that this affidavit, and this case, is the only one in which Mr. Neinast ever had anything to do, so far as she knew.

Mr. B. Parker testified on the witness stand that so far as he knew, Mr. Neinast had never been before his board in any other matter save and except this matter, and that he had never made another affidavit, or done anything, so far as he knew, in assisting, or attempting to assist, any registrant in obtaining a deferred classification; then, under the records of this case H. J. Neinast is to be convicted of disloyalty and denied a seat in this House for the following reason, and the following reason alone:

That is that he dared to make an affidavit to the effect that an affidavit made by William Rosenbaum and his stepson Willie Thaler, was a correct statement, that in addition to this affidavit, he went with Mr. Rosenbaum to see Judge T. J. Carter, county judge of Burleson county, so that Mr. Rosenbaum could talk with him, and have Judge Carter prepare the proper affidavit for him to sign; under the testimony of Neinast and Carter before this committee, Neinast had absolutely nothing to do with dictating to Carter the affidavit made, nor suggested as to what should go into the affidavit, and in fact, both Carter and Neinast say that Neinast was not there when the affidavits were prepared; that at the request of Mr. Rosenbaum he came to Brenham to see Mr. Parker and the board with reference to permitting the boy to remain over until his crop was completed, that Mr. Parker was not in and Mr. Neinast saw Mr. Teague and asked him to see Mr. Parker and request that the boy be permitted to gather his crop before he was taken to the army, and within the next two days Mr. Neinast received a letter from Mr. Teague saying that he had seen Mr. Parker and it was all right to let him go ahead with his crop. Mr. Neinast went with Judge Carter to Austin when the matter was presented to the board. Mr. Neinast was not questioned at that time, nor did he make further affidavits, he only went, at the request of Mr. Rosenbaum, with Mr. Carter. Mr. Rosenbaum paid Mr. Neinast $35 for his expenses on the three trips ($45), to Brenham, to Caldwell and to Austin; this is all the money, or thing of value Mr. Neinast received from Mr. Rosenbaum; Mr. Rosenbaum believing that it was due Mr. Neinast that he pay his expenses on these three trips.

I believe, gentlemen of the committee, that I have just stated to you all the testimony shows what Mr. Neinast has done in this matter, and the record shows that he has done nothing more in any matter pertaining to the draft, but upon the contrary it is shown by the record that his boys were not in the draft age, but that he, Mr. Neinast, had asked his own boys to go ahead and volunteer and join the company in which Mr. Carter's son had enlisted. The boy replied that he was not going to volunteer, but that when the country needed him and called upon him he was ready

to go. The testimony in this matter discloses that neither of his sons were in the draft age at the beginning of the war but that before it closed both of them had come in the draft age, had registered and that on the very day the armistice was signed his oldest son was at the depot, tagged, ready for camp, and ready to go forth and fight for America; that neither of his sons, when they were drafted, claimed any exemption, or attempted in any way to avoid going to war, but were ready and willing to accept the draft and go forth and battle for their country. And this committee has not heard from the lips of any witness upon the witness stand one word that this man had ever said that can be construed in any way that he was disloyal; this committee has not heard of one act except the charge in court, that he was disloyal, therefore, it occurs to me that this committee ought to now be fully convinced that H. J. Neinast of Washington county is not and was not a disloyal citizen.

I desire to call the committee's attention to the case of the United States v. Pierce, decided on November 7, 1917, reported in the Federal Reporter, Vol. 245, page 878, wherein this clause of the court's opinion, I think, is appropriate in this case, you will find it on page 887. "When Congress wrote into Section 3, above quoted, the words 'or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States,' it may have had in mind the hundreds and thousands of cases where fathers, mothers and brothers and sisters will obstruct in a way and to an extent the recruiting and enlistment service by urging and soliciting their sons and brothers not to enlist. No one will contend, I think, that such an act will be held a wilful obstruction of the enlistment service to the injury of the service of the United States within the intent and meaning of Section 3 of the act under consideration." I quote this from that opinion simply to show that William Rosenbaum, the stepfather of Willie Thaler, believed that his son ought to remain at home, as he was the only help at home to take care of the crops, the cattle, and to care for his mother, who had been under the care of a physician for twelve or fifteen years and who at that time was in an enfeebled condition and who at this time is in the same condition.

Under the testimony of Mr. Neinast he testifies that from reliable information that this boy was compelled to do the washing and ironing for that family, because of the sickness of his mother.

Mr. Rosenbaum, ignorant of the laws of his country and his nation, sought the advice of Mr. Neinast, who was his neighbor and his friend, and Mr. Neinast referred him to Judge Carter; Mr. Rosenbaum said he didn't know Mr. Carter and asked Mr. Neinast to go with him and see Judge Carter, which Mr. Neinast did, and introduced him to Judge Carter; Mr. Rosenbaum stated to Judge Carter what the facts were, and Judge Carter prepared the affidavit; that affidavit was made and Mr. Neinast afterwards subscribed to it that it was true.

That is the only violation of any law of God or man. He has made one solitary affidavit, which was the God Almighty's truth. That man has testified before this committee that he never read the indictment. I don't believe that he ever read a line of it. He relied upon me, and if I made a mistake, that is one of the reasons that I feel so keenly this proposition, because I was the one that advised him to plead guilty. He knows now that he is not disloyal, and knew it then. If he was, I would be as hard against him as any other man in Texas. I believe he is just as loyal as any other man on earth. I am ready to go down with him in this fight. What else did he do? What has Henry Neinast done in this whole matter? He made an affidavit, came here to Austin. He made no other affidavits. Didn't even appear before the board again. That is everything on earth Henry Neinast has done. There is no testimony that showed anything else on earth, but they say he is disloyal because he didn't take but $650 worth of bonds. I imagine he just about had all he could do to take $650 worth. It was a pretty fair load for him. Mr. Baldwin intimated that he was forced to take them. Mr. Parker says no committee waited on him. He took exactly what he was assessed, just like I took what I was assessed. He borrowed the money to do it. Has this committee heard a word that Henry Neinast spoke that was disloyal? Mr. Baldwin says he wasn't active. He was just as loyal as a lot of other gray-haired Texans. I can point to you thousands of Americans in my county who didn't do any more than their humble part, but they never made speeches or served on committees. There wasn't anything that

Neinast was called on to do that he didn't do. Now, gentlemen, there is your disloyal citizen from Washington county. Just simply is brought up before this committee as a German, has been indicted, indicted here a year before his case was disposed of.

In this connection, I thought Mr. Robertson was summoned to come before this committee. He was here in town. I don't know what his testimony would be. The night I left here, Mr. Robertson said he had been summoned before this committee. Mr. Robertson thought and knows, as God knows, that Neinast plead guilty to a nominal fee, and he said so in the Galveston News of yesterday, that even if he had gone on and tried the case it would have cost him a great deal more in lawyer and witness' fees. Robertson believed at the time he took the $50 fine that it wasn't a serious matter; he thought what Henry Neinast and John Mathis thought about it. This American Party put his (Neinast's) name on the ticket, then a letter was written to the Attorney General's department. The Attorney General said his name should be placed on the ticket.

My God, my countrymen, is it possible and is it thinkable that Rosenbaum and Neinast were endeavoring at that time and conspiring and confederating to obstruct the recruiting of men drafted in the United States army, or were they attempting in a lawful, fair and just way to present the matter to the proper board for an investigation? Certainly they were trying to do this, and that is all they were trying to do. The affidavits they made will stand the test of truth, although you may turn the searchlight upon them, you cannot and will not discover but what they told the truth in these affidavits. If the making of these affidavits constitutes a man a disloyal citizen, then there are thousands and tens of thousands of the best, loyal citizens in Texas and in the nation who are guilty of disloyalty, for hundreds and thousands of men and women have made affidavits regarding registrants; I know in my own county of cases in which twelve of the best citizens of my county, none of them were German born, but all full-fledged Americans, made affidavits with regards to a registrant, and I know of many other cases where this has happened.

Gentlemen of the committee, there are several matters that have gone into the record in this case which could not have possibly gone in if I had objected to them, but in the beginning of this case I desired a full, fair hearing, and in my answer I opened the book of H. J. Neinast's life to this committee to probe into it and examine it leaf by leaf, and if they could find anything against him to bring it forward; and the parties who are seeking to destroy him, after diligent search and diligent inquiry, discovered that twenty years ago, when Mr. Neinast was running a store and saloon at Longpoint, near his home, that he was indicted for pursuing an occupation without paying his license, and they brought with them a certified copy of the judgment, showing that he paid a fine of $5.00 for this offense. So, out of all the years that he has lived in Washington county they have found where, upon one occasion, he paid a fine of $5.00!

Mr. Neinast says that in explanation of it he had forgotten anything about the matter, but as he now recalls it, his time had run out and he neglected to pay the tax and that he just forgot it, paid the fine of $5.00 and his recollection is from that time on he did not continue in the business. That all happened twenty years ago. Of course, this testimony absolutely could not be admitted in this case for any purpose, but as I stated at the beginning of the trial I would make no objections to any testimony offered, but allow this investigation to be as free and fair as possible.

This may have influence upon the minds of some people that twenty years ago H. J. Neinast "sold liquor"; if it does, then well and good; if it does not influence anybody, then I think more of the man whom it does not influence.

I have attempted to discuss this testimony as I understood it, fully and fairly, to this committee, and in conclusion, I say this, that I hope and trust that I will never be indicted by a Federal court or a State court, and if such an indictment was brought about by my political enemies or if it should happen, I would be gratified beyond measure if I can bring to the witness stand, in the course of that trial, men like Ed C. Hughes, a planter and stock man of Washington county; T. A. Lowe, president of the First National Bank of Brenham; C. L. Wilkins, president of the Farmers National Bank of Brenham; Frank H. Bosse, president of the Washington County State Bank; D. E. Teague, former sheriff of Washington county for twenty-four years; J. B. Williams, capitalist and business man of Brenham; C. W. Homeyer, banker at

Burton; Paul Fricke, ex-United States marshal of this western district of Texas; Judge T. J. Carter, county judge of Burleson county, Texas; John R. Lyon, of Lyon, Burleson county, Texas, who had business dealings and who had been in partnership with Mr. Neinast for many years, and John F. Lyon of Summerville, who has known Mr. Neinast all his life. Every one of these men whose names I have just mentioned has testified that they have known Mr. Neinast nearly all the days of his life, some of them have known him intimately and all of them have known him generally, and they testify that his reputation and character as a man and as a citizen is without spot and without blemish.

Burney Parker, R. E. Pennington and J. E. Routt, the three witnesses introduced by the committee as to his character, each and all testify that they never heard anything against his character until this matter arose, and they testify now that since he has plead guilty to this charge there is now a divided sentiment in Washington county as to his loyalty.

Gentlemen of the committee, I have done. Of course, I do not know what position this committee will take on these charges. It may be that this committee will recommend to the House that the charges, or a part of the charges, have been sustained and call for an impeachment proceeding against Mr. Neinast, and it may be that after the impeachment proceedings are had that the membership of this House may decide to declare his seat vacant and send him back to his country home in Washington county. I say you may do this, and the House may do that, and if this is done, I unhesitatingly say, knowing H. J. Neinast as I do for more than a quarter of a century, that grave injustice will be done him; that you will be sending a man back to the bosom of his family with the stigma of disgrace upon him which is not deserved, for I tell this committee without fear of contradiction that H. J. Neinast has built for himself a reputation in Washington county from the day that he opened his eyes upon this world up to this hour that is a tribute to any man.

Of course, gentlemen, it is easy, this early after the great war, for men to believe that man who has German blood in his veins is disloyal; it is an easy matter to arrive at that conclusion just from charges made; it makes it much stronger when the grand jury indicts and stronger still when he offers his plea of guilty, but I have endeavored to show you, and to show you honestly why and how he came to plead guilty to this charge and again I say to you that I was responsible for this plea of guilt, I and solely I.

I beg this committee not for mercy, but for justice! I beg this committee to take the testimony that you have heard, and if from that testimony you can arrive at a sober judgment that H. J. Neinast is a disloyal citizen, or that H. J. Neinast swore falsely in that affidavit, or that H. J. Neinast conspired with these people to evade the draft, then say so. If on the contrary, you believe the testimony does not show it and that this is simply an unfortunate affair, growing out of a matter over which you had no control, then, I beg of you, as stalwart men of America, to rise up to the full measure of American manhood and declare that H. J. Neinast is entitled to his seat which the people of Washington county elected him to.

Gentlemen, I cannot conclude this argument without reminding you of the fact that there have been other wars besides the great world war which has just ended, and while I would not take a flower out of the wreath of glory won by the young American soldiers, yet we must not forget that about sixty years ago another great war was waged in this country, and that the Confederate soldier is still loved, cherished and admired by the people of the South and I desire to remind you that Emil Neinast, when a lad of 13 years of age quit the autocratic shores of Germany and came to this country, that when the Civil War came on he shouldered his musket and followed the martial strain of Dixie and for four long years in cold and heat, and in rain and sunshine, he followed the cause of the South, and after the war was over he came back to his home in Washington county, there to rebuild for himself and his family a habitation that he might live in comfort and ease in his old age.

Old man Neinast is now 83 years of age, and he and his good wife reside near the same spot where they settled many, many years ago. He is now broken in purse, broken in spirit and feeble with age; his days are numbered and he and his good wife, the father and mother of H. J. Neinast, are this day looking with tear-stained eyes towards the capital of Texas where their boy is upon trial charged with disloyalty, persecuted by political enemies, and I trust and hope that you men composing this committee will not

hasten the end of this old man and his companion in life by saying to them and to the world that their son, who sprang from his loins, is guilty of disloyalty.

In behalf of this old Confederate soldier and his wife, I beg this committee to guard well your judgment in passing upon this case so that your conscience in the years to come will not upbraid you—let your judgment and your verdict kiss the testimony in this case and when you have done that, a message will be carried over the wires from Austin to the humble home of old man Neinast and his wife assuring them that there yet live in Texas men who will not be influenced by hatred, by malice and by politics. If you will do this gentlemen, it will lengthen their days upon earth and the judgment that you render will be approved, not only by these old people, but by an approving God.

ARGUMENT OF H. H. CUMMINS

Before the Neinast Investigating Committee, House of Representatives. January 31, 1921.

Mr. Chairman and Gentlemen of the Committee:

The law with reference to this case I will discuss first. It is my opinion, based upon the authority of the statutes of the United States, and of the decisions of the United States courts, the statutes of the State of Texas and the decisions of the State of Texas, that the respondent in this case has been convicted by his own confession of a felony. The decisions referred to and cited in the speech of John M. Mathis in defense of H. J. Neinast antedate the statute of the United States of March, 1909, defining a felony. That statute says:

"All offenses which may be punished by death or by imprisonment for a term exceeding one year shall be deemed felonies."

That is the statute that was passed by act of Congress since the date of the cases reported, referred to, and cited in the speech of the attorney representing the respondent. Our own statutes provide that felonies are offenses which may be punished by death, or which carry a sentence of imprisonment in a penitentiary.

H. J. Neinast was charged by indictment of the Federal grand jury with the offense of conspiracy in that he unlawfully and wilfully conspired and confederated with other parties to commit an offense against the United States of America, towit: to obstruct the recruiting and enlistment service of the United States to the injury of the service of the United States, the United States then being at war with the Imperial German Government. To this charge of conspiracy and of unlawfully and wilfully obstructing the draft, the defendant of his own free will and accord entered a plea of guilty to that charge, and the plea of guilty states, among other things:

"Wherefore, it is considered and adjudged by the court that the defendants, William Thaler, William Rosenbaum, and Henry Neinast, are each guilty, as confessed in their separate pleas of guilty, of the offense of having on the 1st day of April, A. D. 1918, in the county of Burleson, etc."

That plea of guilty was a plea of guilty to the crime of felony, because it carried with it a maximum punishment exceeding more than one year in the penitentiary. The rule, as fully discussed by Mr. Baldwin this morning, is that the maximum punishment controls and determines the grade of the offense. Therefore the charge against the respondent in this case being a charge for which he could have been sent to the penitentiary for a term of more than one year determines the offense, the offense that he plead guilty to as a felony; and he now stands charged by the grand jury of his country by an indictment by that grand jury, returned properly in court, by his confession, by the action of the United States district court at this place, he stands charged by his own confession and convicted by his own plea of guilty of an offense of the grade of felony; of that there can be no question.

Now, with reference to the effect of a conviction for felony in the United States court precluding a man from holding office and from being elected within the limits of Texas, I now direct my argument. Before, however, getting to that point, I wish to state the case of Huff v. McMichael, 127 S. W. Rep., 574, which is a Texas case, and which conclusively defines the proposition which I have just mentioned that Henry Neinast today stands charged and convicted of a felony under the United States laws. Now, our State Constitution provides, Article 6, Section 1, clause 4:

"All persons convicted of any felony subject to such exceptions as the Legislature may make." This is with reference to the following classes of persons,

who are allowed the right of suffrage in Texas.

The Legislature under the authority of the Constitution, Article 6, Section 1, clause 4, adopted Article 2938, qualifications for voting. The following persons shall not be allowed to vote in this State. The fourth clause under that article reads as follows:

"All persons convicted of any felony * * * except those restored to full citizenship and right of suffrage, or pardoned." Now, you will note by the writing of that clause in the statute, it does not limit the right of suffrage to a person convicted only within the State of Texas of a felony, but it says all persons convicted of any felony. It doesn't say within the limits of the State of Texas, but it says all persons convicted of any felony, and that means a felony under the United States statutes; that means a conviction of felony under any statute of any State in the Union. That is to say, where a man is convicted of a felony in Texas or out of Texas, in the United States, of a felony, he is deprived of the right to vote in Texas, or if he lives in Texas at the time of his conviction, he is deprived of his right to vote, and cannot become an elector within his State until pardoned. I say that because of a decision I have that is based upon practically a similar statute and Constitution as our own, the cases cited by Judge Mathis, which give the right to those convicted in foreign territories to vote is based upon a constitution which restricts the taking away of that right to the limits and boundaries of that State, but Texas makes no limitation, as I have said, in her Constitution nor in her statutes, with reference to he who is convicted of any felony. If he is convicted of any felony, he then has taken away from him and has lost the right to vote. I am reading from the 15th Encyclopedia of Law and Procedure, page 300, fourth clause:

"It has been held that the conviction in a Federal court of a mere statutory offense against the United States does not deprive the offender of his right to vote; but on the other hand, it has been held that a conviction of a crime of a disqualifying degree in a Federal court has the effect to exclude the person convicted from office and from suffrage, the same as if he had been convicted in a State court."

Under that clause is cited several cases. In other words, a conviction of felony of a person in the United States court stands upon the same basis with reference to suffrage and holding office as if he had been convicted within the limits of the State. The decision referred to here under that citation is a Mississippi case. The Constitution of the State of Mississippi with reference to electors and suffrage is similar to our own, and I will read part of the constitution of Mississippi relating to suffrage:

"The Constitution of the State provides for the excluding from suffrage persons convicted of a high crime or misdemeanor." It doesn't say in the Constitution of the State of Mississippi that only those convicted within the limits of the State are deprived of the right of suffrage and of the right of holding office, but it simply says the same as ours, with the exception of the describing of the crime: "persons convicted of high crime or misdemeanors are deprived of the right of suffrage."

The question in this case was where a person had been convicted under the Federal law of an offense that by the Constitution of Mississippi, he was deprived of his right to vote. He was granted a full pardon by the President of the United States. The Governor of the State construed the Constitution of the State of Mississippi that he alone had pardoning power, and that until he pardoned a person convicted in any jurisdiction, his own or any other, that person was deprived of the right of suffrage. The court differed with him and held that where the President of the United States had pardoned a man, who had been convicted of a felony, then he restored to that individual his citizenship in full and the right of suffrage and the right to hold office.

I cited that case, because it seems to be exactly in point, and was acted upon under a constitution that is similar to our own. Now, where the constitution of a State limits the right of suffrage to those within its limits convicted of crime, such as felonies, then a person convicted in a foreign jurisdiction would not lose his citizenship were he to move within the limits of such a State; but where constitutions of States read as ours reads, then a person convicted of any felony, it makes no difference where it is, where the certified record is brought into court, and where as in this case the confession itself is here and the respondent comes here and admits to it himself, he is deprived by our Constitution of the right of suffrage and of the right of holding office.

The Governor claimed in that case that he alone had the authority to pardon, but the President clothed the defendant with citizenship, and the courts held that where the President has pardoned a man, his citizenship was restored.

Now, with reference to the facts in this case. (Judge Mathis requests him to rule on certain excerpts.)

Judge Mathis: There is no authority which you cite that is later than the statute of 1909 which defines a felony under the United States laws.

Mr. Cummins: Those authorities that you cited are with reference to the qualifications of those persons as to testifying and not as to voting. The proposition put in your brief states a person who is offered as a witness in one jurisdiction is not disqualified because he has been convicted of crime in another jurisdiction in the absence of a statute so providing. Those authorities pertain strictly to witnesses, to persons testifying in another jurisdiction, and not to those that are offering themselves as electors or office holders; and, as I said, all those decisions antedate the statute referred to, and they refer principally to witnesses and not to electors, and I will say in reference to all of those decisions that I have only had time to run one or two of them down, that I did read some of the cases, and those that I read were not to the point.

Judge Mathis: I quote liberally from them, there.

Judge Cummins: Yes, but you seem to have gotten off on the proposition of witnesses testifying as contradistinguished from electors and people qualified to hold office.

Judge Mathis: I realize Judge that you haven't had a chance to read them all, but I have reference to electors and jurors. Can you not reason by analogy that if a man is entitled to be a juror, he is entitled to hold office and vote?

Mr. Baldwin: In reply to that question, the Federal statutes specifically specifies that they are given the right by Federal statute.

Mr. Cummins: That is by Federal statute, but the right under the State statute takes away the right of suffrage, it takes away the right of a man to become a witness as well as the right to vote or hold office, whether or not he was convicted of a felony in the limits of the State. A man convicted in Oklahoma of the offense of a felony, before being pardoned, cannot testify in a court of justice in Texas.

Judge Mathis: They held different in an Oklahoma case.

Judge Cummins: You show me a Texas case where a man convicted of a felony can testify in a court of justice in Texas.

Now, with reference to the facts in this case, Judge Mathis has made a very beautiful speech. He has made a powerful plea, but it seems to me that the time to have made that address, the time to have made that plea, was in the courts of his country, when this case was first had, if he believed then, as he believes now, or as his address before this committee would lead one to believe that he did believe and does believe, then I say that he was lax in his defense of Henry Neinast.

Judge Mathis: I will admit it.

Mr. Cummins: He says that the charges here are brought about by hatred and by malice and by political feeling. If they are I am not aware of such feeling. I come from the northern part of Texas, from Grayson county, and I never knew Henry Neinast until I was appointed on this committee.

Judge Mathis: Mr. Cummins, you misunderstood me if you thought I meant it for the committee. I didn't mean that the committee had any feeling.

Mr. Cummins: I want to say that for my part I know of no feeling whatever against H. J. Neinast.

Judge Mathis: I don't think you do.

Mr. Cummins: And I absolve this committee from any feeling at all or any hatred or any malice. We have been prosecuting this matter to find out the truth and that is the only reason I am here—to find the real truth and only the truth. It seems to me that if a charge of malice and of hatred should be had in this case, it is a case of a charge of malice and hatred against the law of the United States, against the grand jury sitting at Austin, who investigated this case, and who brought in a true indictment against Henry Neinast, Thaler and Rosenbaum. This committee I know, and no member of the House so far as I know, had anything to with the indictment brought by the Federal grand jury against the defendant in this case; and, as I said before, if I had been the defendant at that time, if he was such an excellent character at that time, if he had sworn to nothing false at that time, if he had not willfully conspired to violate the laws of his land at that time, then was the time, then was the time to stand before the judge and the jury of his country and

say "not guilty." I will stand here until I rot, I will stand here until I die, until I refute the charge that I have been instrumental in standing in the way of the draft of the country I love. If he says, and he did so state, that he plead guilty to save time, and his counsel asks us not to stain him and not to send him back to Washington county a stained man, I say he got that stain long before this committee, a stain that will last until his death bed and follow him under the ground. Nothing that this committee can do will take away his stain. Send him back as a private citizen, and could you compare that stain with the one where he stood in a court of justice of his country and says "I plead guilty. I confess to the crime." Henry, did you know what you were pleading guilty to? Yes. Did you know you could be sent to the penitentiary? Yes. Why did you plead guilty? To save a few dollars. Why gentlemen, before I would enter a plea of guilty on a ground like that to a charge like that I would say, take my goods and chattels, take my property, take my clothes, take my skin, and take my life, but don't brand me as a traitor, don't brand me as a man standing against my country and in favor of its enemies, and such a child's cry at this time that he pleaded guilty to save money comes too late, in my judgment. The time for that was when he was charged, when he went up there to try the case. It comes too late here at this time to say he hasn't done any wrong.

Mr. Chairman, I stand by the judgment of the courts of my country, and when the United States court speaks and says that such and such things are right, I am willing to back it up with my life, because it is my judgment and it is the decree of the land I love, of those in office whom I have confidence in, and I don't believe any court of justice in the United States would ever permit a man to plead guilty to a crime like that who didn't believe he was guilty. I don't believe that a lawyer with the ability, with the foresight, with the judgment, with acumen of the defendant's attorney in this case would permit a client to plead guilty unless he thought that he was getting the best of it. I am not blaming the attorney in this case, not a particle. He presented the defense, and the defendant entered the plea of guilty at the suggestion and request of his attorney.

Why, Parker is just a plain honest man. Parker didn't cause him to plead guilty, but Parker says that the affidavit was false and he stood to it, and the record shows where Parker said that when Henry Neinast swore that the presence of that boy on that farm was necessary to the running of that enterprise it was false. It seems to me that he should be given some weight; some weight should be given to his statement that his (Thaler's) presence there was not necessary. He (Parker) testified, too, that Rosenbaum had never been injured. If Rosenbaum has had his shoulder and ribs broken, where was the doctor? Where was the evidence that would convince you and me that he was unable at the time these affidavits were made to perform labor on the farm. The tax records show that he didn't own a single head of cattle; they show that he only had fifty acres in cultivation, and Neinast himself said that there was nothing whatever the matter with his (Rosenbaum's) head, arms or legs, except he couldn't raise one arm very high, and said that otherwise Rosenbaum was all right.

Now, I don't look with suspicion upon the father or mother of a boy who is in the draft and who is put in class 1, and who love that boy and think of the dangers and things of that kind, who come up and stretch the truth a little bit in an affidavit, but for an outsider, who lives six miles away, and whose testimony shows he only occasionally went by that place now and then to interest himself to the extent that Henry Neinast did in this matter, followed up by the indictment and conviction and confession, then I am willing to say with the United States court that he went too far, and that will be the findings of the gentleman from Grayson county.

The evidence as to his general reputation in the country where he lived shows that sentiment is now divided as to his loyalty, and unless a man is a full 100 per cent American patriot, I don't think he ought to be trusted to make the laws of his country. I believe the first qualification of a lawmaker is love of country, interest in the welfare of his country, and I don't believe that a man who walks up to a court of justice and pleads guilty to the charge of false swearing in an endeavor to obstruct the draft during the war ought to be trusted to make the laws of Texas. He is not a fool. He is a smart man, admits he has a good education; was six or eight years justice of the peace. He took pleas of guilty from the guilty as he sat there

as a judge. When he walked into the Federal court he was asked if he wanted to enter a plea of guilty. Judge Carter said they informed him of the charge against him, and Mr. Neinast says in this record he knew he could be sent to the penitentiary on that plea of guilty, and I say a defense as to the facts comes too late. I have entered a demurrer in my mind on the fact and the law only is now what I am interested in, and under the law, as I see it and as I read it, Henry Neinast pleaded guilty, and stands today a felon in the United States under that plea.

Now this is about all I care to say to this committee. I have covered the ground as I understand it, without prejudice, without any former knowledge of it, but I am here for service, and I, for one, shall return to the House a recommendation that the respondent be unseated and expelled.

Mr. Baldwin: I would like to state for the information of Judge Mathis and all concerned, that no one talked to me about this case. No person from Washington county, no person on the witness stand, and no person other than members of the committee talked to me about it. There was no effort made by any person to prejudice me in advance, or to poison my mind, and had they undertaken to do so, they would have been spurned only with contempt.

Attorney General's Department,
State of Texas.

February 1, 1921.

Hon. W. M. Fly, Chairman, Neinast Investigating Committee, Austin, Texas.

Dear Sir: In response to the request made by your committee, wherein the following inquiry is made:

"Was H. J. Neinast, upon his plea of guilty in the United States District Court, Western District of Texas, convicted of a felony?"

This matter has been before this department at a prior date, and on October 12, 1920, the writer addressed a letter to Hon. W. H. Bouldin, county attorney of Washington county, wherein it was held that the fact that H. J. Neinast had been convicted in the Federal Court upon his plea of guilty would not prevent his name from being certified as a candidate of the American Party for Representative of the Sixty-ninth Representative District of Texas.

This ruling was based on the holding by the courts in the following cases:

Berkowitz v. U. S., 93 Fed. Rep., 452; Gaudy v. State, 10 Neb. 243; 4 N. W., 1019; Ex parte Beela, 81 S. W., 739; Cooper Grocery Company v. Neblett, 203 S. W., 365.

In the case of Berkowitz, the defendant was indicted under a similar statute and charged with making a false affidavit, therefore, there is considerable similarity in the Berkowitz and the instant case.

It was held in the case of Gaudy v. The State, supra, that conviction for a conspiracy to violate a law of the United States under Section 544 of the United States is not a conviction of a felony, but of a misdemeanor, and was not disqualifying to vote or hold office. However, in this same case the court held that a person convicted of a felony under a law of this State (Nebraska) or of the United States, is not qualified to vote or hold office under the laws of this State (Nebraska) unless restored to civil rights.

The writer makes mention of these cases and the court's holdings therein for the reason that he so advised Mr. Bouldin on October 12, 1920.

There are a great many other cases where the same rule of law is laid down, many of such cases being cited and discussed by Hon. John M. Mathis, counsel for H. J. Neinast. However, upon investigation it will be found that all of such cases were passed on by the courts of the country prior to the enactment by Congress of Section 10509 (Criminal Code, Section 335), which defines a felony as follows:

"All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors."

The above quoted Federal statutory provison was enacted March 4, 1909, and became effective and operative January 1, 1910.

The criminal statutes of this State, Article 55, Penal Code, defines a felony to be "every offense which is punishable by death or by imprisonment in the penitentiary held absolute or as an alternative is a felony."

Section 10212c, United States Compiled Statutes, under which Neinast was indicted, provides that the punishment shall be by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.

Prior to the enactment by Congress

of Section 10509 (Criminal Code, Section 335), wherein Congress defined a felony, every offense was a misdemeanor unless by statute it was expressly made a felony, and since the enactment and taking effect of Section 10509, United States Compiled Statutes (Criminal Code, Section 335), we fail to find any court decisions that substantiate or tend to support our holding contained in letter of October 12, 1920, addressed to Hon. W. H. Bouldin, county attorney of Washington county, and the further fact that our Federal and State statutes, wherein a felony is defined, is to our minds so perfectly clear and obviously plain as to make further discussion unnecessary, you are therefore advised that it is the opinion of this department that H. J. Neinast was convicted of a felony upon his plea of guilty in the United States District Court for the Western District of Texas.

Very truly yours,
C. L. STONE,
Assistant Attorney General.

Mr. Fly moved to adopt the majority report.

Mr. Wessels moved that the House adopt the minority report.

Mr. Miller of Dallas moved to postpone consideration of the motion of Mr. Wessels indefinitely.

Mr. Wessels moved to postpone further consideration of the report until 10 o'clock a. m. next Tuesday.

Question—Shall the motion of Mr. Wessels to postpone prevail?

RECESS.

On motion of Mr. Horton, the House, at 12:15 o'clock p. m., took recess to 2 o'clock p. m. today.

AFTERNOON SESSION.

The House met at 2 o'clock p. m., and was called to order by Speaker Thomas.

REPORT OF COMMITTEE TO INVESTIGATE NEINAST CHARGES.

The House resumed consideration of pending business, same being the report of the committee to investigate the charges against Hon. H. J. Neinast, with motion of Mr. Fly to adopt the report of the majority of the committee and motion of Mr. Wessels to adopt the report of the minority committee, and motion of Mr. Miller of Dallas to postpone indefinitely the motion of Mr. Wessels to adopt the minority report, and motion of Mr. Wessels to postpone further consideration of the report until 10 o'clock a. m. next Tuesday pending.

Question first recurring on the motion of Mr. Wessels to postpone further consideration of the report until next Tuesday, it prevailed.

Mr. Patman moved that the testimony taken in the case be printed in the Journal, and the motion was lost.

INVITING HON. JOHN M. MATHIS TO ADDRESS THE HOUSE.

Mr. Wessels offered the following resolution:

Whereas, The Hon. John M. Mathis was counsel for respondent H. J. Neinast and it is desired by the House that said respondent be given the opportunity to present his case on the point of law of whether the respondent was guilty of a felony; therefore, be it

Resolved, That the said J. M. Mathis be invited to address this House on this point of law for not exceeding one hour during present hearing of case of said respondent Tuesday, February 8, provided Mr. Mathis is present at that time.

The resolution was read second time.

Mr. Merriman offered the following amendment to the resolution:

Strike out the words "one hour" and insert in lieu thereof "thirty minutes."

The amendment was lost

Question recurring on the resolution, it was adopted.

TO PROVIDE COPIES OF EVIDENCE OF NEINAST CASE.

Mr. Carpenter offered the following resolution:

Resolved, That 142 copies of the evidence be printed and placed upon the desks of the members, provided they can be procured before next Tuesday.

The resolution was read second time, and was lost.

RELATING TO ARGUMENTS IN NEINAST CASE.

Mr. Pollard offered the following resolution:

Whereas, Further consideration of the Neinast case has been postponed until next Tuesday, and inasmuch as the speech of Hon. John M. Mathis has been on the desks of the members of the House for some time, presenting only one side of said case; and

Whereas, It is desirable that the other side be known, to counteract the pos-

sible effects which may be created over the State of Texas by said speech; and

Whereas, It is proper and desirable that public record be made of the reasons for the action of the committee in making recommendations; therefore be it

Resolved, That there be published in today's House Journal, in connection with the report and recommendations of the investigating committee, the arguments presented by and before the committee and the opinion of the Attorney General to said committee.

The resolution was read second time and was adopted.

(Mr. Hall in the chair.)

PROVIDING FOR A CONSTITUTIONAL CONVENTION.

The House resumed consideration of pending postponed business, same being House Concurrent Resolution No. 12, Providing for a constitutional convention, with amendment by Mr. John Davis of Dallas pending.

Question recurring on the amendment, it was adopted.

Mr. Satterwhite offered the following amendment to the bill:

Amend by striking out paragraph 3 and insert in lieu thereof the following:

"The convention herein provided for shall be composed of one hundred and three delegates, elected as follows: Ten of said delegates shall be elected as delegates-at-large by the qualified electors of the entire State of Texas, and three delegates shall be elected by the qualified electors of each of the thirty-one senatorial districts in Texas, as the senatorial districts are constituted at the time of the election of the delegates to said convention."

Mr. Hill offered the following amendment to the amendment:

Amend the amendment by striking out all after the words "districts in Texas," in line 9 of said amendment, and insert in lieu thereof the following: "as said districts are proposed in House bill No. 48, by Burkett, now pending."

Mr. Burmeister raised a point of order on the consideration of the amendment on the ground that it is vague and indefinite, therefore not germane to the purpose of the bill.

The Speaker sustained the point of order.

Question recurring on the amendment by Mr. Satterwhite, it was adopted.

(Speaker in the chair.)

Question—Shall the resolution be adopted?

Mr. Hill raised a point of order on further consideration of the resolution at this time on the ground that the time for the consideration of local bills has arrived.

The Speaker sustained the point of order.

EMPLOYEES OF THE HOUSE.

The Speaker announced the following appointments:

Stenographer—Miss Lucile Byrn.

Porter—Jack Blocker.

HOUSE BILL NO. 67 ON THIRD READING.

The Speaker laid before the House, on its third reading and final passage,

H. B. No. 67, A bill to be entitled "An Act creating a special road law for Coryell county, Texas, making the commissioners for said county supervisors of the roads in their respective districts; prescribing their duties as such supervisors; prescribing how said roads and bridges shall be built and worked; providing for payment of overseers for overtime; providing that each commissioner's beat shall receive all the road and bridge funds paid by said beat; providing how and where said moneys shall be spent; providing for teams and tools, and providing ways for road hands to work on said road, and providing for substitutes; defining the duties of county treasurer and county clerk relative to said road law; providing for investigation by grand jury for violations of said law; fixing penalties for violation of said law; repealing all special laws in conflict herewith; making this law cumulative to the general road law, where same does not conflict, and providing where same conflicts with general road law that this special law shall supersede general laws, and providing for an emergency."

The bill was read third time and was passed.

NOTICE GIVEN.

Mr. Darroch gave notice that he would on tomorrow call up for consideration at that time House bill No. 46, which bill was heretofore read second time and laid on the table, subject to call.

HOUSE BILL NO. 173 ON THIRD READING.

The Speaker laid before the House, on its third reading and final passage,

H. B. No. 173, A bill to be entitled

"An Act to amend Section 1, Chapter 50, of Local and Special Laws of the State of Texas, being an act known as House bill No. 122, enacted by the Thirty-sixth Legislature of the State of Texas, at its Third Called Session, approved June 17, 1920, creating Miles Independent School District; this amendment revising, diminishing and re-establishing the limits and metes and bounds of said district as established by said act, to include only territory in Runnels county and excluding from said district certain territory in Runnels county and all territory in Tom Green county, and restoring and re-establishing such excluded territory which said act known as House bill No. 122 included in said Miles Independent School District to and as constituting, in whole or in part, as the case may be, the same original respective school districts of Tom Green and Runnels counties which such territory constituted, in whole or in part, before the taking effect of such act; continuing in office the trustees of such original respective school districts of Tom Green and Runnels counties who were in office when said original act took effect, with the same powers and duties as then conferred upon them by law, until the expiration of their respective terms of office; and continuing all the parts of said act which are not hereby amended in full force and effect; repealing all laws in conflict herewith, and declaring an emergency."

The bill was read third time.

The Clerk was directed to call the roll, and the bill was passed by the following vote:

Yeas—111.

Adams.
Aiken.
Baker.
Baldwin.
Barker.
Barrett of Bell.
Bass.
Beasley of Hopkins.
Beasley of McCulloch.
Beavens.
Binkley.
Black, W. A., of Bexar.
Bonham.
Brady.
Branch.
Brown.
Burmeister.
Carpenter.
Childers.
Chitwood.
Coffee.
Cox.
Crawford.
Cummins.
Darroch.
Davis, John E., of Dallas.
Davis, John, of Dallas.
Duffey.
Duncan.
Edwards.
Fly.
Fugler.
Garrett.
Greer.
Hall.
Hanna.
Harrington.
Harrison.
Henderson of McLennan.
Henderson of Marion.
Hendricks.
Hill.
Horton.
Johnson of Gillespie.
Johnson of Ellis.
Johnson of Wichita.
Jones.
Kacir.
Kellis.
King.
Lackey.
Laird.
Lauderdale.
Lawrence.
Leslie.
Lindsey.
Looney.
McDaniel.
McFarlane.
McKean.
McLeod.
Malone.
Martin.
Mathes.
Menking.
Merriman.
Miller of Dallas.
Miller of Parker.
Morgan.
Moore.
Morris of Medina.
Morris of Montague.
Mott.
Neblett.
Owen.
Patman.
Perkins of Cherokee.
Perkins of Lamar.
Perry.
Pollard.
Pope.
Quaid.
Quicksall.
Rice.
Rogers of Harris.
Rogers of Shelby.
Rountree.
Rowland.
Satterwhite.
Seagler.
Sims.
Smith.
Sneed.
Stewart of Reeves.
Swann.
Sweet of Brown.
Sweet of Tarrant.
Teer.
Thomas of Limestone.
Thomason.
Thompson of Harris.
Thompson of Red River.
Thorn.
Thrasher.
Veatch.
Wadley.
Walker.
Webb.
Wessels.
West.
Williams of McLennan.
Williams of Montgomery.

Absent.

Black, O. B., of Bexar.
Bryant.
Burns.
Estes.
Hardin.
Kveton.
Laney.
Neinast.
Pool.
Rosser.
Schweppe.
Stephens.
Stevenson.
Wallace.

Absent—Excused.

Barrett of Fannin.
Burkett.
Crumpton.
Curtis.
Dinkle.
Faubion.
Grissom.
McCord.
Marshall.
Melson.
Quinn.
Shearer.
Stewart of Edwards.
Westbrook.
Wright.

HOUSE BILL NO. 183 ON SECOND READING.

The Speaker laid before the House,

on its second reading and passage to engrossment,

H. B. No. 183, A bill to be entitled "An Act to repeal an act passed by the Third Called Session of the Thirty-sixth Legislature of the State of Texas, and approved June 17, 1920, establishing Common County Line School District No. 2 in Hopkins and Franklin counties, Texas, so as to include certain lands in Common School District No. 28 of said Franklin county, Texas, and conferring upon said County Line School District No. 2 certain authority, and describing the boundaries of said Common County Line School District No. 2 in said Hopkins and Franklin counties."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 285 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 285, A bill to be entitled "An Act creating the Nocona Independent School District in Montague county, Texas; defining its boundaries, including the present Nocona Independent School District; providing for a board of trustees in said district; conferring upon said district and its boards of trustees all the rights, powers, privileges and duties now conferred and imposed by the general laws of Texas upon independent school districts; and the boards of trustees thereof; providing that the present boards of trustees continue in office until expiration of their respective terms; providing that said district shall have its own assessor and collector of taxes and board of equalization, and providing that all bonds and maintenance taxes heretofore voted by any school district included within the bounds of the district hereby created, shall remain in full force and effect; and specifically repealing Chapter 2 of the Special Laws of Texas passed by the Thirty-first Legislature and all amendments thereto, and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 241 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 241, A bill to be entitled "An Act to repeal Chapter 60 of the Local and Special Laws of the Regular Session of the Thirty-sixth Legislature, approved March 13, 1919, creating a special road system for Falls county, and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 266 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 266, A bill to be entitled "An Act to amend Section 2, Chapter 6, of the Special Laws of Texas passed by the Second Called Session of the Thirty-fifth Legislature at page 39 thereof, approved August 30, 1917, being an act creating the Alanreed Independent School District in Gray county, Texas, giving the board of trustees the power to select and designate the depository for said school district, and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 277 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 277, A bill to be entitled "An Act creating the Tuscola Independent School District in Taylor county, Texas; defining its boundaries; providing for a board of trustees in said district; conferring upon said district and its boards of trustees all the rights, powers, privileges and duties now conferred and imposed by the general laws of Texas upon independent school districts and the board of trustees thereof; declaring that all taxes or bonds heretofore authorized by any former school district included within the bounds thereof shall remain in full force and effect, and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 281 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 281, A bill to be entitled "An Act creating the Perryton Independent School District in Ochiltree county, Texas; defining its boundaries; providing for a board of trustees in said district; conferring upon said district and its board of trustees all the rights, powers, privileges and duties now con-

ferred and imposed by the general laws of Texas upon independent school districts and the board of trustees thereof; providing that such districts may have its own assessor and collector of taxes and board of equalization; repealing Chapter 94, of the Local and Special Laws passed by the Third Called Session of the Thirty-sixth Legislature, and Chapter 1 of the Local and Special Laws passed by the Fourth Called Session of the Thirty-sixth Legislature, and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 289 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 289, A bill to be entitled "An Act creating the Rowena Independent School District in Runnels County, Texas; defining its boundaries; providing for a board of trustees in said district; conferring upon said district and its board of trustees all the rights, powers, privileges and duties now conferred and imposed by the general laws of Texas upon independent school districts and the board of trustees thereof, declaring that all taxes or bonds heretofore authorized by any former school district included within the bounds thereof shall remain in full force and effect; and repealing Act of the Third Called Session of the Thirty-sixth Legislature creating the Rowena Independent School District, and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 306 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 306, A bill to be entitled "An Act creating the Hontoon Independent School District in Ochiltree county, Texas; defining its boundaries; providing for a board of trustees in said district; conferring upon said district and its board of trustees all the rights, powers, privileges and duties now conferred and imposed by the general laws of Texas upon independent school districts and the board of trustees thereof; declaring that all taxes or bonds heretofore authorized by any former school district included within the bounds thereof shall remain in full force and effect; and declaring an emergency."

The bill was read second time and passed to engrossment.

HOUSE BILL NO. 307 ON SECOND READING.

The Speaker laid before the House, on its second reading and passage to engrossment,

H. B. No. 307. A bill to be entitled "An Act creating the Booker Independent School District out of territory in Lipscomb county, Texas; defining its boundaries, fixing the number of trustees, providing for their election in accordance with the general laws of towns and villages incorporated for school purposes, and fixing their powers and duties, and providing for the election of the first trustees after this act becomes effective; authorizing the trustees to levy and collect a maintenance tax and to issue bonds for building purposes, and to levy, assess and collect a bond tax providing for elections upon bond and tax propositions and for notice of such elections; prescribing the qualifications of voters at such elections, the form of ballot and for making returns; providing for the appointment of an assessor and collector of taxes, and fixing his powers, duties, bond, and compensation; providing for the collection of delinquent taxes, and for the assessment and collection of taxes by the county assessor and collector; applying the general laws when a matter is not expressly provided for, and declaring an emergency."

The bill was read second time and passed to engrossment.

PROVIDING FOR CONSTITUTIONAL CONVENTION.

The House resumed consideration of pending postponed business, same being House Concurrent Resolution No. 12, Providing for a constitutional convention.

Mr. Merriman moved the previous question on the resolution and the main question was ordered.

Question first recurring on the resolution, yeas and nays were demanded.

The resolution was lost by the following vote:

Yeas—32.

Adams.	Coffee.
Bass.	Cox.
Black, W. A., of Bexar.	Davis, John E., of Dallas.
Branch.	Davis, John, of Dallas.
Burmeister.	Fugler.
Carpenter.	

Henderson of Marion.
Hendricks.
Horton.
Johnson of Ellis.
Malone.
Martin.
Mathes.
Miller of Dallas.
Owen.
Quicksall.
Rice.
Rountree.
Satterwhite.
Smith.
Stewart of Reeves.
Sweet of Tarrant.
Teer.
Thompson of Harris.
Thrasher.
Webb.
Williams of Montgomery

Nays—80.

Aiken.
Baker.
Baldwin.
Barker.
Barrett of Bell.
Beasley of Hopkins.
Beasley of McCulloch.
Beavens.
Binkley.
Bonham.
Brady.
Brown.
Burns.
Childers.
Chitwood.
Crawford.
Darroch.
Duffey.
Duncan.
Edwards.
Fly.
Garrett.
Greer.
Hall.
Hanna.
Hardin.
Harrington.
Harrison.
Henderson of McLennan.
Hill.
Johnson of Gillespie.
Johnson of Wichita.
Jones.
Kacir.
Kellis.
King.
Laird.
Laney.
Lauderdale.
Lawrence.
Leslie.
Lindsey.
Looney.
McDaniel.
McFarlane.
McKean.
McLeod.
Marshall.
Menking.
Merriman.
Miller of Parker.
Moore.
Morris of Medina.
Morris of Montague.
Neblett.
Patman.
Perkins of Cherokee.
Perkins of Lamar.
Perry.
Pollard.
Pope.
Quaid.
Rogers of Harris.
Rogers of Shelby.
Rowland.
Shearer.
Sims.
Sneed.
Swann.
Sweet of Brown.
Thomas of Limestone.
Thomason.
Thompson of Red River.
Thorn.
Veatch.
Wadley.
Walker.
Wallace.
Wessels.
Williams of McLennan.

Absent.

Black, O. B., of Bexar.
Bryant.
Cummins.
Estes.
Kveton.
Lackey.
Morgan.
Mott.
Neinast.
Pool.
Rosser.
Schweppe.
Stephens.
Stevenson.
West.

Absent—Excused.

Barrett of Fannin.
Burkett.
Crumpton.
Curtis.
Dinkle.
Faubion.
Grissom.
McCord.
Melson.
Quinn.
Seagler.
Stewart of Edwards.
Westbrook.
Wright.

Mr. Hill moved to reconsider the vote by which the resolution was lost and asked to have the motion to reconsider spread on the Journal.

Mr. Williams of McLennan called up the motion to reconsider and moved to lay it on the table.

The motion to table prevailed.

NOTICES GIVEN.

Mr. Jones gave notice that he would on tomorrow call up for consideration at that time House bill No. 58, which bill had heretofore been read second time and laid on the table subject to call.

Mr. Rogers gave notice that he would on tomorrow call up for consideration at that time House bill No. 51, which bill had heretofore been read second time and laid on the table subject to call.

BILLS ORDERED NOT PRINTED.

On motion of Mr. Thomason, it was ordered that House bills Nos. 323, 330 and 338 b not printed.

MESSAGE FROM THE SENATE.

Senate Chamber,
Austin, Texas, February 2, 1921.

Hon. Chas. G. Thomas, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has adopted

S. C. R. No. 10, Providing for a full investigation of State penitentiary.

Respectfully,
A. W. HOLT,
Assistant Secretary of the Senate.

HOUSE CONCURRENT RESOLUTION SIGNED BY THE SPEAKER.

The Speaker signed, in the presence of the House, after giving notice thereof and its caption had been read, the following enrolled

H. C. R. No. 6, Creating marketing and warehousing system.

ADJOURNMENT.

On motion of Mr. Bass, the House at 5:20 o'clock p. m. adjourned until 10 o'clock a. m. tomorrow.

APPENDIX.

STANDING COMMITTEE REPORTS.

The following standing committees filed favorable reports today on bills as follows:

Appropriations: House bill No. 342.
Agriculture: House bills Nos. 339, 340, 199, 198, 192, 228.
Education: House bills Nos. 323, 330, 338.
Judiciary: House bills Nos. 229, 240, 261, 322, 230; Senate bills Nos. 63, 55.
Labor: House bills Nos. 161, 298, 316, 122.
Public Lands and Buildings: House bill No. 57.
Roads, Bridges and Ferries: House bills Nos. 244, 241.
Constitutional Amendments: House bill No. 320.
Revenue and Taxation: House bill No. 220; Senate bill No. 45.

The following standing committees filed adverse reports today on bills as follows:

Judiciary: House bills Nos. 280, 292.
Labor: House bills Nos. 315, 296, 312.
Oil, Gas and Mining: House bill No. 205.
Revenue and Taxation: House bill No. 233.

REPORT OF COMMITTEE ON ENGROSSED BILLS.

Committee Room,
Austin, Texas, February 2, 1921.

Hon. Charles G. Thomas, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

H. B. No. 25, A bill to be entitled "An Act to amend Article 7235, Chapter 6, Title 124, Revised Civil Statutes, 1911, as amended by Chapter 72, General Laws of the Thirty-third Legislature, and Chapters 26 and 99 of the General Laws of the Thirty-fourth Legislature, and Chapter 131, General Laws of the Thirty-fifth Legislature, and Chapter 10, of the General Laws of the Third Called Session of the Thirty-fifth Legislature, and Chapter 13 of the Fourth Called Session of the Thirty-fifth Legislature, and Chapter 35, General Laws of the Thirty-sixth Legislature, with reference to the mode of preventing horses and certain other animals from running at large in the counties named, so as to include Bowie and Marion counties, and declaring an emergency."

H. B. No. 65, A bill to be entitled "An Act to amend Chapter 75, pages 140 and 141, of the General Laws of the Regular Session of the Thirty-fifth Legislature, which was an act amending Articles 1521, 1522, 1543, 1544 and 1526, of Revised Civil Statutes of 1911, defining the original and appellate jurisdiction of the Supreme Court of Texas and regulating the practice therein."

And find the same correctly engrossed.

SNEED, Chairman.

REPORT OF COMMITTEE ON ENROLLED BILLS.

Committee Room,
Austin, Texas, February 2, 1921.

Hon. Charles G. Thomas, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills, to whom was referred

H. C. R. No. 6, Relating to growing and marketing cotton,

Have carefully compared same and find it correctly enrolled, and have this day, at 4:30 o'clock p. m., presented same to the Governor for his approval.

THRASHER, Vice Chairman.

EIGHTEENTH DAY.

(Thursday, February 3, 1921.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Thomas.

The roll was called and the following members were present:

Adams.	Black, Q. B., of Bexar.
Aiken.	Black, W. A., of Bexar.
Baker.	Bonham.
Baldwin.	Brady.
Barker.	Branch.
Barrett of Bell.	Brown.
Barrett of Fannin.	Bryant.
Bass.	Burmeister.
Beasley of Hopkins.	Burns.
Beasley of McCulloch.	Carpenter.
Binkley.	Childers.